ENF 10 Removals

Active Operational Bulletins (OBs)

Most recent date of changes: 2017-02-24

Updates to chapter

Listing by date:

Date: 2017-02-24

A number of changes have been made throughout the chapter to reflect new policies as well as to correct and update information.

As well, content from ENF 11 has been incorporated into ENF 10.

Date: 2010-03-31

Changes were made to provide clarification to the definition of escort types throughout the chapters. Minor changes were made where appropriate.

Minor changes were made to reflect new title and number on forms.

Changes were made throughout the chapters to reflect the termination of the Reciprocal Arrangement between Canada and the U.S.

An intranet link was added to the delegation section for easy reference.

Section 9 – Amended to reflect the three types of removal orders.

Section 10.1 and 10.2 – Amended to remove the wording "under the IRPA" when referring to detention.

Section 11 – Links to court decision were added for reference purposes.

Section 13 procedure – Temporary Suspension of Removals (TSRs) has been added for reference.

Section 14 procedure – Sanctuary in places of worship has been added for reference.

Section 19 procedure – United Nations Interim Measures has been added.

2009-05-26

A number of changes have been made throughout the chapter to reflect new policies as well as to correct and update information and hyperlinks.

The Minister of Public Safety and Emergency Preparedness (PSEP) has been changed to Minister of Public Safety Canada (PS). The Immigration Warrant Response Centre (IWRC) has been changed to the Warrant Response Centre (WRC). CIC Medical Services Branch has been changed to CIC Health Management Branch.

Section 3 has been amended to include a reference to security certificates and protection of information, pursuant to Bill C-3 which received Royal Assent on February 14, 2008. The description of a security certificate as a removal order has been added.

The definition of voluntary compliance has been clarified in Section 6.

Section 12.11 has been revised to reflect the correct interpretation of IRPA regarding conditional sentence orders as a stay of removal under A50(b).

New instructions for seeking diplomatic assurances in death penalty cases is included in Section 14.1.

Section 33 has been updated to include instructions for closing certain cases in FOSS with a "GUF5."

2006-01-19

Changes were made to reflect transition from Citizenship and Immigration Canada (CIC) to the Canada Border Services Agency (CBSA). The term "delegated officer" was replaced with "Minister's delegate" throughout text, references to "departmental policy" were eliminated, references to the CIC and CBSA officers and the Citizenship and Immigration (C&I) Minister and the Public Safety and Emergency Preparedness (PSEP) Minister were made where appropriate, and other minor changes were made.

2004-10-28

Section 11.2 has been updated to replace a link to the list of countries for which there is a TSR. The old link was no longer operational.

Sections 22 and 22.1 have been completely replaced to reflect new procedures that were put in place in May 2004 and were published on the Investigations and Removals website. Procedure, position titles and contacts have been updated.

Section 24.1 has been updated as one of the positions referred to was outdated. Details of the procedure and contacts were also added to the last paragraph.

Section 25 has been updated to change the title "Immigration Control Officer" for "Migration Integrity Officer" as per the new procedure in Section 22.1.

Section 35.2 has been clarified to read "after a removal order comes into force" instead of the former "becomes enforceable."

2003-10-20

Appendix D - 1, Appendix D - 2, Appendix E - 1, Appendix E - 2, Appendix F and Appendix G have been updated.

2003-06-27

Links added.

2003-05-07

Among many changes to this chapter, the highlights include:

Section 5.1 has been updated to provide a web link to the Treasury Board Travel Guidelines which took effect October 1, 2002.

Section 6 introduces new definitions for Authorization to Return to Canada (ARC) and Previously Deported Person (PDP).

Section 9.3 has incorporated new procedures for determining the calculation of when a removal order comes under A49(2), specifically when a decision (formerly known as *deemed notification)* was mailed by the Refugee Protection Division.

Section 9.5 provides guidance when determining if a removal order is no longer in force and effect.

Section 10.1 has removed the guidelines for deemed notification. For further information on determining when a removal order comes into force for decisions delivered by mail, refer to the new instructions in section 9.3.

Section 11.2 provides a direct web link for a list of countries to which CIC is currently not removing (TSRs).

Section 12 has been modified to assist in the application of A50(a) which deals with stays of removal. Note: This section is currently under review and further details will be provided as they become available.

Section 15 provides amendments to the guidelines for the Pre-Removal Risk Assessment (PRRA) program.

Section 17 has been amended and provides a link to chapter ENF 11 - Verifying Departure Chapter (sections 10 and 11) for the procedures in determining whether a person should be removed through voluntary compliance or removal by the Minister.

Section 18 is a new section on entering data on Previously Deported Persons (PDP) onto CPIC. This section provides on overview of the PDP initiative, provides the procedures to complete the PDP screen in FOSS after a person's departure has been verified, as well as the criteria for the PDP information to be downloaded to CPIC.

Section 19.4 is a new section outlining the circumstances for returning seized documents to refugee claimants.

Section 20 has been amended to provide clarification on obtaining travel documents.

Section 24.1 has been amended to provide discretion to officers when contacting Medical Services at NHQ in cases where persons with medical conditions who are subject to removal from Canada claim that inadequate treatment or facilities are available in their destination country.

Section 31 provides clarification to the guidelines on repayment of removal expenses for persons removed at the expense of CIC.

2003-05-05

Section 18, Entering Previously Deported Persons onto CPIC. New sections provide details on the scope of the PDP initiative and guidance to officers after enforcing removal orders. These sections provide details on how to complete the new PDP document in order to enable the PREV.DEP flag in FOSS and identify a record for download to CPIC-PDP database.

ENF 10 Removals

PART 1 - INTRODUCTION

1 What this chapter is about

This chapter describes how to remove foreign nationals from Canada who have contravened the *Immigration and Refugee Protection Act* (IRPA) and its Regulations and who are the subject of an enforceable removal order. It is designed to assist officers in planning, organizing and directing the removal of foreign nationals from Canada. This also includes the process to verify/confirm departure of foreign nationals who are at a port of entry (POE) or a visa office outside Canada and are the subject of enforceable removal orders, or the removal of persons from Canada who are the subject of departure, exclusion or deportation orders.

In addition, the latter part of this chapter, to be read in conjunction with the general removal policies and procedures, outlines specific procedures for the removal of foreign nationals to the United States.

2 Program objectives

The objectives of Canada's immigration policy concerning removals are:

- to maintain and protect public order, health and security in Canada;
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- to ensure that all the legal rights accorded to foreign nationals being removed are observed;
- to conduct their removal effectively and equitably;
- verify the removal of foreign nationals efficiently and expeditiously;
- ensure that foreign nationals required to leave Canada actually do so;
- ensure that foreign nationals who are the subject of enforceable removal orders leave Canada immediately and that the removal order is enforced as soon as possible; and
- allow the Canada Border Services Agency (CBSA) to update their records to indicate that a case has been concluded and no further enforcement action is required.

3 The Act and Regulations

Officers responsible for the removal of foreign nationals from Canada should be familiar with the legislative and regulatory authorities contained in IRPA and its Regulations. The following are referenced authorities that should assist officers.

Provision	**Section**
Foreign national	A2(1)
Permanent resident	A2(1)
Enforceable removal order	A48(1)
Effect of an enforceable removal order	A48(2)
When a removal order comes into force: non-refugee protection claimants	A49(1)
When a removal order comes into force: refugee protection claimants	A49(2)
Stay of removal: decision made at a judicial proceeding/Public Safety Canada (PS) Minister given an opportunity to make submissions/if directly contravened by the enforcement of a removal order	A50(a)

Stay of removal: sentenced to a term of imprisonment in Canada	A50(b)
Stay of removal: duration of stay imposed by the Immigration Appeal Division (IAD) or any other court of competent jurisdiction	A50(c)
Stay of removal: duration of stay under A114(1)(b)	A50(d)
Stay of removal: duration of stay imposed by the PS Minister	A50(e)
Authorization to Return to Canada after an enforced removal order	A52(1)
Arrest and detention with a warrant	A55(1)
Arrest and detention without a warrant	A55(2)
Detention by the Immigration Division	A58(2)
Order for the delivery of inmate at the end of the period of detention	A59
A security certificate that has been determined to be reasonable is a removal order that is in force	A80
Arrest and detention of a permanent resident or foreign national named in an A77(1)certificate	A81
Release by the PS Minister from detention for removal from Canada	A82.4
Exceptions for Pre-Removal Risk Assessment (PRRA) protection	A112(2)
Persons granted PRRA protection but restricted from being conferred refugee protection	A112(3)
Unenforced removal order – no visa shall be issued	R25
Conditions for stay of removal – pre-removal risk assessment (under R232)	R162 and R163
PRRA application received within 15 days must not be decided until at least 30 days after notification was given	R164
Requirements to return to Canada - departure order	R224(1)
Departure order becoming a deportation order	R224(2) / R224(3)
Requirements to return to Canada - one-year exclusion order	R225(1)
Requirements to return to Canada - five-year exclusion order	R225(2) / R225(3)
Requirements to return to Canada - deportation order	R226(1)
Stay of removal: temporary suspension for generalized risk	R230
Stay of removal: judicial review of an RAD decision	R231
Stay of removal: PRRA	R232
Stay of removal: humanitarian and compassionate (H&C) or public policy considerations	R233
Application of A50(a)	R234
Modality of enforcement: voluntary compliance or removal by the Minister	R237
Requirements for voluntary compliance	R238(1)
Voluntary compliance: choice of country	R238(2)
Requirements for removal by the PS Minister	R239
When a removal order is enforced - requirements	R240(1)
Circumstances when a removal order is enforced outside Canada	R240(2)
Country of removal when removed by the PS Minister	R241(1)
Circumstances when the Minister selects the country of removal	R241(2)

Mandatory removal by the PS Minister and the PS Minister selects a country of removal	R241(3)
Transferred under the *Mutual Legal Assistance in Criminal Matters Act*: not authorized to enter another country (order not enforced)	R242
Requirements to return to Canada: payment of prescribed removal costs if removed by the PS Minister	R243

3.1 Transitional provisions

IRPA and its Regulations establish a transitional correspondence between the removal provisions of the former *Immigration Act*, 1976, and IRPA. Each transitional provision having an impact on the removals program is outlined below.

Application of IRPA

Under the transitional provision of A190, every application, proceeding or matter under the former Act that was pending or in progress immediately before the coming into force of this section shall be governed by IRPA on that coming into force.

Stays

Under the transitional provision of A197 and despite A192, if an appellant who has been granted a stay under the former Act breaches a condition of that stay, the appellant shall be subject to A64 and A68(4).

Decisions made under former Act

Under the transitional provision of R317(1), a decision made under the former Act that was in effect immediately prior to the coming into force of IRPA continues to be in effect after that coming into force.

Removal orders

Under the transitional provision of R319(1), a removal order made under the former Act that was unexecuted continues in force and is subject to the provisions of the IRPA.

Stay of removal

Under the transitional provision of R319(2) and (3), the enforcement of a removal order that had been stayed under paragraph 49(1)(c), (d), (e) and (f) of the former Act continues to be stayed until the earliest of the events described in R231(1)(a), (b), (c), (d) and (e).

This provision does not apply if the subject of the removal order was determined by the Convention Refugee Determination Division not to have a credible basis for their claim; or the subject of the removal order is inadmissible on grounds of serious criminality, or resides or sojourns in the U.S. or St. Pierre and Miquelon and is the subject of a report prepared under A44(1) on their entry into Canada.

Conditional removal order

Under the transitional provision of R319(4), a conditional removal order made under the former Act continues in force and is subject to A49(2).

Enforced removal order

Under the transitional provision of R319(5), A52 applies to a person who was outside Canada after a removal order had been enforced against them.

Warrants

Under the transitional provision of R325(1), a warrant for the arrest and detention made under the former Act is a warrant for arrest and detention made under IRPA.

Removal not prohibited

Under the transitional provision of R326(3), a person whose removal was allowed by the application of paragraph 53(1)(a), (b), (c) and (d) of the former Act is a person referred to in A115(2).

Judicial review

Under the transitional provision of R348(1), any application for leave to commence an application for judicial review and any application for judicial review or appeal from an application that was brought under the former Act and is pending or in progress before the Federal Court or the Supreme Court of Canada is deemed to have been commenced under Division 8 of Part 1 of IRPA and is governed by the provisions of that Division and section 87.

3.2 Forms

The forms required are shown in the following table.

Form Title	Form number
Certificate of Departure	IMM 0056B
Order for Detention	BSF 304
Costs Payable by Transporters	IMM 0459B
Detained Sticker	BSF 578
Denial of Authorization to Return to Canada	IMM 1202B
Authorization to Return to Canada	IMM 1203B
Notice to Transporter	BSF 502
Direction to Leave Canada	BSF 503
Envelope: Removal Documents	BSF 582
Direction to Return to the United States	BSF 505
Notice of Removal and Profile	BSF 560
Notice of Issuance of Permit	IMM 1443B
Removal Checklist and File Audit	BSF 522
Canada Immigration Single Journey Document	IMM 5149B
Withdrawal of a Claim for Refugee Protection Prior to Referral to the Refugee Protection Division	IMM 5317B
Criminality 1 Stickers	BSF 571
Criminality 2 Stickers	BSF 572
Use of Force Incident Report	BSF 586

4 Instruments and delegations

Recognizing their respective mandates, the Minister of Immigration, Refugees and Citizenship and the Minister of PS may designate persons or class of persons as officers to carry out any purpose of any provision of IRPA; delegate their powers and functions under IRPA, unless otherwise provided.

While the PS Minister and the CBSA has the policy lead for enforcement with respect to IRPA, Immigration, Refugees and Citizenship Canada (IRCC) continues to be responsible for screening applicants for inadmissibility and for acting on that responsibility, according to their delegated authority.

Pursuant to A6(1) and A6(2), the Minister [IRCC or PS] has designated persons or class of persons as officers to carry out any purpose of any provision, legislative or regulatory, and has specified the powers and duties of the officers so designated. Refer to the Designation of Officers and Delegation of Authority documents in IL 3 for more details.

http://www.cbsa.gc.ca/agency-agence/delegation/irpa2007-04-eng.html and the intranet at: http://atlas/about-sujet/legislation/delegations/index_e.asp.

5 Definitions

Accompaniment Escort	Occurs when management has identified that there is no risk, but due to airline, in-transit or foreign rules there is a requirement for an officer presence. This is for facilitation purposes only.
Authorization to return to Canada (ARC)	Written authorization by an officer, in prescribed circumstances, to allow a person to return to Canada after their removal order has been enforced.
Certificate of Departure	This document confirms that the person named on the removal order has appeared before an officer at the port of entry (POE) to verify their departure, that they have departed from Canada, and have been authorized to enter their country of destination. This document also confirms the enforcement of a removal order outside Canada.
Enforceable removal order	A removal order that has come into force and is not stayed.
Enforced removal order	A removal order is enforced only after the requirements of R240(1) or, in the case of a person outside Canada, R240(2) have been met.
Escorts	When it has been determined that an enforcement presence is required when the individual under a removal order is being transported, accompanied or escorted due to risk.
Foreign national	A person who is not a Canadian citizen or permanent resident, including a stateless person.
Permanent resident	A person who has acquired permanent resident status and has not subsequently lost that status under A46.
Pre-Removal Risk Assessment (PRRA)	A process which assesses risk prior to the removal of a person who is eligible to apply for a PRRA.
Previously	A person whose deportation order has been enforced and requires

deported person (PDP)	authorization to return to Canada by an officer pursuant to A52(1).
Removal by the Minister	The PS Minister must enforce a removal order where the foreign national does not or cannot avail themselves of enforcement by voluntary compliance, a negative determination is made under R238(1), or the foreign national's choice of destination is not approved under R238(2).
Removal order comes into force	A removal order made with respect to a person who is not a refugee protection claimant comes into force on the latest of the dates set out in A49(1). With respect to a person who has made a claim for refugee protection, the removal order is conditional and comes into force on the latest of the dates set out in A49(2).
Risk-based Escort	When an enforcement officer travels outside Canada to effect a removal where management has determined that sufficient risk exists to justify it.
Stay of removal	The PS Minister cannot remove a person from Canada in circumstances where IRPA or the Regulations specify that the removal is prohibited, or where there is a valid court order prohibiting the person's removal.
Transport Escort	Occurs when an individual under a removal order is being: • transported from one location to another within Canada; • transported to the last departure point in Canada; • transferred by land to the United States POE. Security guards contracted by the CBSA will do this work where services are available.
Unenforced removal order	A removal order that has not been enforced in accordance with IRPA and the Regulations.
Voluntary compliance	A person who is not a danger to the public, a fugitive from justice in Canada or another country, or seeking to evade or frustrate the cause of justice in Canada or another country may voluntarily comply with a removal order before an officer and satisfy the officer that the requirements of R238(1)(a) and (b) and R238(2) have been met. The foreign national must be in a position to obtain their own travel documents and pay for all removal arrangements.

6 Procedure: Investigations & Removals Web site

Officers should regularly visit the Web site developed and updated by the Enforcement and Intelligence Division at NHQ.

This site provides assistance and instructions to officers performing removal functions and includes:

- current policy instructions;
- the list of countries to which removal has been temporarily suspended;
- removal statistics;
- removal bulletins;
- other useful links for other governments or agencies in Canada and abroad; and
- contact persons at the Enforcement and Intelligence Division, NHQ.

PART 2 – REMOVAL PROGRAM

7 Procedure: Office responsibilities for removal

7.1 Responsibilities of an inland CBSA removals office

Inland Enforcement officers are responsible for making removal arrangements for:

- persons ordered removed by the Immigration Division;
- persons ordered removed by a Minister's delegate;
- persons ordered removed at a POE but could not be removed by the POE

Inland Enforcement officers are also responsible for:

- making removal arrangements for the escort of a person subject to removal from Canada;
- providing guidance to other CBSA offices and POEs on document procurement, special procedures and escort assistance; and
- ensuring the safe custody of foreign nationals under a removal order, and the safekeeping of their documents and effects under the officers' charge.

Officers should keep in mind:

- that they must be vigilant in ensuring the physical safety of the person and others in their immediate surroundings, while on escort duty;
- that the supervisor should determine which officer will assume the lead in the escort; and
- that the *Envelope: Removal Documents* [BSF 582] is to be used for the safekeeping of papers and documents.

7.2 Responsibility for POE cases

Border Services Officers (BSO) are responsible for making removal arrangements for cases where the person is issued a removal order and the removal order can be enforced immediately (e.g. denied entry into Canada, can be removed on the next available flight, etc)

For all other cases where a removal order has been issued at a POE to persons who cannot be removed immediately, BSOs must transfer the file as soon as possible to their nearest Inland Enforcement removal office. The file should be accompanied with a summary of the case and the reason why the file is being transferred.

Persons residing or sojourning in the U.S. or Saint-Pierre and Miquelon must immediately be removed despite any appeal or leave applications for judicial review that they may have entered.

8 Procedure: Authority to remove from Canada

8.1 Types of removal orders

There are three types of removal orders:

- departure orders;
- exclusion orders; and

- deportation orders (includes departure orders that have become deportation orders).

  Security certificates which have been determined to be reasonable by the Federal Court will serve as a removal order that is in force.

  For further information on removal orders and the effect of removal orders refer to ENF 6.

8.2 When a removal order comes into force – non-refugee protection claimant

Under A49(1), a removal order for a non-refugee protection claimant will come into force on the latest of the following dates:

- the day the removal order is made, if there is no right to appeal [A49(1)(a)];
- the day the appeal period expires, if there is a right to appeal and no appeal is made [A49(1)(b)]; or
- the day of the final determination of the appeal, if an appeal is made [A49(1)(c)].

8.3 When a removal order comes into force – refugee protection claimant

With respect to a refugee protection claimant, the removal order does not come into force under A49(2) until specific events have passed. At the time the removal order is made, it is not in force and is conditional until it comes into force on the latest of the following dates:

- the day the claim is determined to be ineligible under A101(1)(e) if the claimant came directly or indirectly to Canada from a country designated by the Regulations, other than a country of their nationality or former habitual residence [A49(2)(a)];
- in all cases other than A101(1)(e), seven days after the claim is determined to be ineligible [A49(2)(b)]; or
- 15 days after notification that the claim has been rejected by the Refugee Protection Division (RPD) if no appeal is made, or by the Refugee Appeal Division (RAD) if an appeal is made [A49(2)(c)];

- 15 days after notification that the claim is declared withdrawn or abandoned [A49(2)(d)] by either the RPD or RAD; or
- 15 days after proceedings have been terminated as a result of a notice that the claim was based on misrepresentation under A104(1)(c) or the claim was not the first one made by the claimant under A104(1)(d) [A49(2)(e)].

For the purposes of A49(2)(c) and A49(2)(d), the Refugee Protection Division Rules and Refugee Appeal Division Rules define when a decision is considered to be received, and whether that decision is given in person or made in writing. After a decision takes effect, there is a 15-day period under A49(2)(c) and A49(2)(d) for the removal order to come into force.

Either party may withdraw a claim or an application to vacate or to cease refugee protection by one of the two methods below, depending on the status of the application.

1. No substantive evidence accepted by the RPD:

Withdrawal of a claim or application may occur under RPD rule 59(2) if the claimant informs the RPD orally or in writing that they no longer want to continue their claim. In these cases, substantive evidence must not have been accepted at the RPD proceeding. If no evidence has been submitted, the Registrar of the RPD may withdraw the claim, usually on the day the person

requests to withdraw. When the claim is withdrawn, the Registrar of the RPD will complete form RPD.12 "Notification confirming the withdrawal of a claim for refugee protection [rule 59(2)]" and notify the parties.

2. Substantive evidence accepted by the RPD:

When a claim or application for refugee protection is withdrawn under RPD rule 59(3) and substantive evidence has been submitted to the RPD, the person must make an application to the RPD to withdraw their claim. A hearing is conducted, either orally or in writing, and the RPD member(s) will make a decision on the application. If the application is granted, the RPD Registrar will complete form RPD12.3 "Notice of decision Application to withdraw [rule 59(3)]" and notify both the claimant and the CBSA that the claim is withdrawn.

Decisions delivered by regular mail

The RPD and RAD Rules provide the timelines for determining when a decision is considered to be received if it was delivered by regular mail. For A49(2)(c) and A49(2)(d) cases only, a document that is delivered by regular mail to a party in the proceeding is considered to be received seven days after the day it was mailed. If the seventh day is a Saturday, Sunday or other statutory holiday, the document is considered to be received on the next working day [RPD rules 41(2) and 41(3); and RAD rules 35(2) and 35(3)].

For the purposes of the RPD Rules, a decision is provided through a notice of decision [RPD rule 67(1)] and is considered to be a document under RPD rule 31. Similarly, for the RAD, a decision is provided through a notice of decision (RAD rule 50(1)) and is considered a document under RAD rule 27. Notification under A49(2)(c) and A49(2)(d) is the delivery date of a notice of decision.

For the purpose of the RPD and RAD Rules, *regular mail* does not include decisions that are delivered by a means other than the Canada Post regular standard mail service. In cases where a decision is delivered by means other than regular mail (i.e., fax, courier service, e-mail), the decision takes effect when the person receives the decision. For these cases, proof of service will establish the date on which the decision was received.

Example: Calculation of the notification period for a decision sent by mail

An appeal of a negative RPD claim was rejected by the RAD on July 31, 2015, and the decision was mailed on the same day using a regular mailing service provided by Canada Post. The seven-day calculation period for the delivery of the decision begins on August 1 and ends on August 7. As the appeal of the negative claim was rejected by the RAD, the removal order will come into force on August 22, 2015, which is 15 days after the person was notified of the decision. If there is no stay of removal, a departure order comes into force and the person must depart Canada within 30 days. If the refugee claimant was issued an exclusion or deportation order and if there is no stay of removal, the removal order would become enforceable and the person must leave Canada immediately [A48].

There is a simple way to calculate the notification period for the majority of decisions sent by regular mail: there is a seven-day mailing period plus a 15-day period before the removal order comes into force. This equals 22 days from the date of mailing of a decision for the removal order to come into force. It is important to remember that in cases where the seventh day falls on a statutory holiday, the calculation of time for when the removal order will come into force must be adjusted accordingly.

Decisions delivered in person

When a decision is made at an RPD or RAD hearing, the decision takes effect when the Division member or a three-member panel states the decision orally and, if applicable, gives reasons for the decision.

Decisions made in writing

When a decision is made by the RPD or RAD in writing, it will take effect when the Division member or a three-member panel signs and dates the reasons for the decision.

8.4 When a removal order becomes enforceable

A removal order is enforceable under A48(1) after the removal order has come into force and is not stayed. If a removal order is enforceable, the foreign national must leave Canada immediately and the order must be enforced as soon as possible.

8.5 When a case is removal ready

Removal ready is defined as cases where the pre-removal risk assessment has been completed, if eligible, and no stays, impediments, or active immigration warrants exist. It is incumbent upon each CBSA removal officer to ensure these cases are removed as soon as possible in coordination with the priorities for removal (see section 10).

8.6 Removal orders no longer enforceable – Pardons/Acquittals on appeal

If a Canadian criminal conviction is pardoned or acquitted on appeal, a removal order based solely on that conviction must not subsequently be enforced. If the pardon or acquittal is later revoked or overturned pursuant to the *Criminal Records Act*, the removal order may become enforceable again.

There will be some cases where the inadmissibility report contained more than one allegation or there was more than one conviction. It may be necessary to review the transcript of the admissibility hearing to determine which allegations formed the basis of the removal order. If there was a finding of inadmissibility for any other allegation, or for other convictions which have not been pardoned or acquitted, the removal order remains enforceable. The order becomes unenforceable only if all of the convictions reflected in the removal order have been pardoned or acquitted.

The pardon or acquittal does not have the effect of erasing the deportation order from the record or rendering it invalid. If the pardon is revoked or ceases to have effect, the removal order will become enforceable again as a result. A pardon is prospective: the intent is to eliminate any negative consequences of the conviction after the time of the pardon. However, it does not erase the conviction or any resulting consequences that occurred before the pardon was granted.

This policy reflects the jurisprudence in *Smith* v. *Canada (Minister of Citizenship and Immigration)* (1998)., A valid deportation or exclusion order may not be enforced after a pardon has been granted for the offence in question, the conviction has been revoked under the *Criminal Records Act,* or there has been a final determination of an acquittal.

Former permanent residents

If the removal order was issued against a permanent resident, then the person lost that status under section 46(1)(c) on the day the removal order came into force. Following a pardon or acquittal, there is no provision in IRPA for the person to regain permanent resident status, despite the removal order becoming unenforceable. The person remains a foreign national and may reapply for permanent residence in the normal manner. The valid removal order is simply deferred until permanent residence is granted. Although the person may no longer be inadmissible, it does not change the fact that they were inadmissible at the time the removal order was issued. Therefore, their permanent residence status was lost.

Officers should prepare a letter to the person outlining that:

As a result of a pardon/acquittal on [*insert date of pardon/acquittal*] at [*Correctional Services Canada or court and location of acquittal*] of a conviction of [*insert offence name and section number of the offence*], the [*insert type of removal order and document number*] issued on [*insert date of removal order issuance*] will not be enforced. On the day that your removal order came into force, your status became that of a foreign national. You may obtain an application for permanent residence by accessing the IRCC Web site at www.cic.gc.ca, or by contacting the Call Centre at 1-888-242-2100. Please note that any further evidence of inadmissibility, including any future convictions, could result in enforcement action.

Updating GCMS and NCMS

After court records have been reviewed to confirm the pardon or acquittal, the case should be closed in GCMS with remarks specifying which convictions have been pardoned or acquitted and that the removal order is not enforceable. This information will assist with any future encounters with the individual by the CBSA.

The removal order disposition in GCMS should be left at "IN FORCE." A pardon or acquittal is not a finding that the removal order was issued in error or that the removal order is quashed. If the pardon or acquittal is subsequently revoked or overturned, the removal order becomes enforceable and removal procedures can resume.

In NCMS, the removal process should be "Terminated," with notes to indicate which specific convictions have been pardoned or acquitted and that the removal order is not enforceable at this time.

In the event that a person applies for permanent resident status after the pardon or acquittal is granted, the removal process stage in NCMS should indicate "Pending Landing." Should the person receive permanent resident status, the removal process stage in NCMS should indicate "PC Landed." This disposition will conclude the Removal process.

Note: Please refer to OP 1, section 6 for instructions on procedures regarding pardons or acquittals after a removal order has been enforced.

9 Procedure: Departure orders

A foreign national who is the subject of a departure order must leave Canada within 30 days of the departure order becoming enforceable. Failure to physically depart Canada within the 30-day applicable period and to meet the criteria for a removal order to become enforced under R240(1)(a) to (c) will result in the departure order becoming a deportation order under R224(2).

9.1 Calculation of the applicable period for departure orders

To ensure that the 30-day applicable period is applied consistently and fairly to all foreign nationals, officers must become familiar with the calculation periods and be aware that the calculation of the applicable period is suspended when:

- the person is detained; or
- the removal order against the person has a statutory or regulatory stay.

Under R224(3), the 30-day applicable period is suspended until the foreign national is released or the stay is lifted. The applicable period resumes the day following the release or the lifting of the stay. The number of days in the applicable period that elapsed before the detention or stay are then subtracted from the time remaining in the original 30-day applicable period.

9.2 Calculation of the applicable period for detained persons on a departure order

In cases where a foreign national is the subject of a departure order and has been detained in Canada, the 30-day applicable period is suspended under R224(3) until the foreign national's release from detention. Once the foreign national is released, the remaining time, if any, resumes the day following the person's release.

It is very important that the GCMS/NCMS systems are updated when a person is detained or released under IRPA.

Example: Detained on a departure order within the 30-day applicable period.

A departure order becomes enforceable on August 6, 2015.

The foreign national is detained on August 23, 2015.

The foreign national is then released from detention on September 2, 2015.

From August 6, 2015 to August 23, 2015, there are 17 days that are counted against the departure order. The clock resumes on September 3, 2015, and the foreign national has 13 days remaining to depart Canada and enforce the departure order. The detention period is not calculated as part of the 30-day applicable period. The foreign national should enforce their departure order by September 15, 2015, in order to avoid a deportation order.

Example: Detained on a departure order within the 30-day applicable period.

A departure order becomes enforceable on July 1, 2015.

The foreign national is detained on July 10, 2015.

The foreign national is released from detention on August 31, 2015.

Even though the foreign national was detained for a period of more than 30 days, the person is not considered to be under a deportation order. From July 1, 2015 to July 10, 2015, there are nine days counted against the departure order. The clock resumes on September 1, 2015, at day 10 of the applicable period. The foreign national has 20 days to depart from Canada before the departure order becomes a deportation order.

When departure is verified, it is very important for officers to accurately indicate on the IMM 0056B and in GCMS/NCMS whether the removal order is a departure or deportation order.

9.3 Calculation of the applicable period for a stayed departure order

If a foreign national is the subject of a departure order that is stayed, the officer must consider whether the person is on a valid stay or whether the stay has been lifted. If the stay has been lifted, the officer must calculate the 30-day applicable period, taking into consideration the time when there was no stay of removal in effect. Based on that calculation, if the person's time in Canada exceeds 30 days, the order becomes a deportation order. If the time period is within the 30-day applicable period, the order remains a departure order.

For further clarification, the applicable period could be suspended when a departure order has been stayed pursuant to R230(1). This will occur when the PS Minister determines that a country or place poses a generalized risk to the entire population of that country or place. After the Minister has reviewed the circumstances in that country or place and cancelled the stay under R230(2), notification will be distributed indicating that the PS Minister has lifted the TSR to that country or place. In these cases, the 30-day applicable period resumes on the day following the cancellation of the stay. The number of days within the applicable period before the stay was imposed is counted against the time remaining.

Example: Stay of departure order

A departure order becomes enforceable on January 2, 2014.

The departure order is stayed on January 8, 2014.

The stay is lifted on March 21, 2015.

From January 2, 2014 to January 8, 2014, there are six days that are counted against the departure order. From January 8 to March 21, 2015, there are 437 days where the removal was stayed. This period is not calculated as part of the 30-day applicable period. The clock resumes on March 22, 2015, and the foreign national has 24 days remaining from this date to depart Canada and enforce their departure order. The departure order must be enforced by April 14, 2015, in order to avoid a deportation order against the foreign national.

When departure is verified, it is very important for officers to accurately indicate on the IMM 0056 and in GCMS/NCMS whether the removal order is a departure or deportation order.

9.4 Failure to comply with a departure order

If a person fails to depart by the applicable date, the departure order will automatically become a deportation order under R224(2). In these cases, officers should:

- convoke the individual to attend a pre-removal interview;
- if the person fails to attend the removal interview and cannot bet located, issue a warrant under A55(1) for removal;
- complete a warrant package and send to Warrant Response Centre so that it can be uploaded to the Canadian Police Information Centre (CPIC),
- locate and arrest the person for removal;
- detain the person for removal, should reasons for detention exist; and
- remove the person.

For further procedures on investigations, arrest and detention, see ENF 7, section 15 and ENF 20.

10 Procedure: Removal Priorities

The removals program is consistent with the CBSA's overall priority to focus on cases that pose the greatest risk to the safety and security of Canadians and ensuring the integrity of Canada's immigration program. In this regard, while all removals are to occur as soon as possible, specific cases are considered a greater priority. Below are the three levels of case priority:

- Level One – Safety and Security grounds, specifically, foreign nationals inadmissible for security; international or human rights violations; criminality; and organized crime.

- Level Two – New System failed refugee claimants (decision after December 15, 2012), and cessation cases. New system failed refugee claimants are to be processed based on the Last-in First-Out regime.

- Level Three – All other inadmissibilities, including backlog failed refugee cases (decided before December 15, 2012); non-compliance; misrepresentation; and financial inadmissibility.

It should be noted that all removal cases are a priority, but an officer's efforts should first be directed to cases in level one. Note, a detained case in any of the three levels will always be considered a level one priority.

10.1 Criminal ranking on removals

As noted above, an important objective of the removals policy is to focus first and foremost on removing criminals from Canada. All criminals are a priority, however, it is recognized that some criminals are more serious than others and should be processed more expeditiously.

Criminals should be divided into two streams:

- those convicted of more serious offences (priority one as described in section 10.2 below); and
- those convicted of less serious offences (priority two as described in section 10.8 below)

Note: This system is not intended to displace or override any other previous directives or instructions related to detention.

10.2 Priority one cases

Priority one covers persons who may pose a serious threat to individuals or society. In order to ensure that persons are ranked consistently and objectively, tests A to E have been created to help officers understand what is considered to be a serious threat.

Each of the tests is self-contained. They are not meant to be used in tandem. A person meeting the criteria in **any of** the following tests should be ranked priority one.

Test	Purpose	For more information, see:
Test A	Test A is intended to include persons who have been convicted of an offence in Canada for which the maximum possible sentence is 10 years or more, or for whom there are reasonable grounds to believe that they have been convicted outside Canada of an offence that, if committed in Canada, would constitute an offence for which the maximum sentence is 10 years or more.	Details of test A (section 10.3)
Test B	Test B includes persons who are believed on reasonable grounds to have committed, outside Canada, an act or omission that constitutes an offence under the laws of the place where the act or omission occurred and, that if committed in Canada, would constitute an offence that may be punishable under any Act of Parliament by a maximum term of imprisonment of at least 10 years, and which involved one or more of the following elements: weapons, violence against the person, sexual assault, narcotics or drugs, or acts against children.	Details of test B (section 10.4)
Test C	Test C covers persons who have been determined by the IRCC Minister to be a danger to the public under A101(2)(*b*) or A115(2)(*a*) or are the subject of a certificate under A77(1).	Details of test C (section 10.5)
Test D	Test D covers persons who have not been determined by the IRCC Minister to be a danger to the public under A101(2)(*b*) or A115(2)(*a*) or who are the subject of a certificate under A77(1), but for whom there are reasonable grounds to believe that the opinion of the IRCC Minister or the issuance of a certificate is warranted. Although some persons will have already been determined by the IRCC Minister to	Details of test D (section 10.6)

	be a danger or have been issued an A77(1) certificate and will thus be covered by test C, test D allows officers to make their decision to rank persons as priority one in the absence of an opinion or certificate. This will enable officers to give the person the appropriate ranking at the same time as a certificate is being requested.	
Test E	Test E covers persons who, in the opinion of the officer, pose a threat to the public or to individuals, including employees. Test E allows officers to rank as priority one those persons who may have neither a conviction nor a danger opinion or certificate, and for whom a danger opinion or certificate may not be issued, but for whom there are reasonable grounds to believe that they constitute a threat to other individuals.	Details of test E (section 10.7)

10.3 Details of test A

In each case, the offence for which the person was convicted must have involved at least one of the following elements:

- weapons;
- violence against the person;
- sexual assault;
- narcotics or drugs; or
- acts against children.

Each of the elements listed represents a number of offences considered to be serious. Listing elements, instead of naming individual offences, ensures that there are no offences which will be inadvertently left out, and eliminates the need to continuously update the chart as changes to the *Criminal Code* or other Acts of Parliament occur.

"Violence against the person" refers to offences which involve actual physical harm to another person and does not include such things as psychological violence or threats of physical violence. Threats of physical violence, however, can be taken into account under test E (persons who pose a threat to the public or to individuals).

"Sexual assault, narcotics, drugs and acts against children" refer only to offences proceeded with by way of indictment.

When ranking a criminal under test A, officers must first determine whether or not the person is described under A36(1)(*a*) or A36(1)(*b*). Officers should not be concerned with the actual sentence that was imposed by the court—only with the maximum imposable sentence. If this first criterion is met, then the officer should determine whether or not the offence involves any of the listed elements. When determining whether or not any of the elements were involved, officers may not always need to look at the circumstances surrounding the commission of the offence but only at the actual offence for which the person was convicted. Normally, the name of the offence should be enough to determine whether any of the above elements are covered. Otherwise, officers may have to refer to other information such as police reports to consider risk or danger to the public.

If a person has been convicted of more than one offence, officers should rank the person according to the most serious conviction. The conviction for which the person is ranked must meet both the sentence threshold requirement (of at least 10 years) and the elements requirement.

10.4 Details of test B

The elements are the same as those used in test A and the same meaning should be applied to them under this test.

When ranking a criminal under test B, officers must first determine whether or not the person is described under A36(1)(*c*). If so, then the officer should determine, as above, whether or not the offence(s) involved any of the listed elements.

10.5 Details of test C

When ranking a criminal under test C, officers must have evidence that:

- a person is inadmissible by reason of a conviction outside Canada that, if committed in Canada, would constitute an offence under an Act of Parliament that is punishable by a maximum term of imprisonment of at least 10 years and the IRCC Minister is of the opinion that the person is a danger to the public in Canada pursuant to A101(2)(*b*);
- a person is inadmissible on grounds of serious criminality and the IRCC Minister is of the opinion that the person is a danger to the public in Canada pursuant to A115(2)(*a*);
- a person is inadmissible on grounds of security, violating human or international rights or organized criminality and the IRCC Minister is of the opinion that the person is a danger to the security of Canada pursuant to A115(2)(*b*); or
- a certificate has been signed by the IRCC Minister and the PS Minister under A77(1) against a permanent resident or foreign national who is inadmissible on grounds of security, violating human or international rights, serious criminality or organized crime.

10.6 Details of test D

When ranking a criminal under test D, officers must have reasonable grounds to believe that the person warrants the IRCC Minister's opinion that the person is a danger to the public under A101(2)(*b*) or A115(2)(*a*), or warrants a certificate under A77(1). Officers should use the same test that is currently used to recommend a danger opinion or a certificate: evidence equivalent to that which is currently used to support an A44(1) report.

10.7 Details of test E

Under test E, officers may take into account the person's behaviour, the seriousness of the offences they are currently charged with, and the number and seriousness of their multiple convictions. For example, if a person has a number of convictions, none of which alone meets the criteria specified in test A, but which taken together indicate a threat to the public or to persons, the person could be ranked priority one under test E. A person who threatens physical violence, if the threats are credible, could be made priority one under this test.

When ranking a person under test E, officers must have supporting evidence which meets the same standard that would support an officer's case for continued detention at a detention review.

10.8 Priority two cases

Priority two is intended to include all criminals not covered by priority one. Officers should rank as priority two any person:

- convicted in Canada of an offence under any Act of Parliament punishable by way of indictment, or two offences not arising out of a single occurrence pursuant to A36(2)(*a*);

- convicted outside Canada of an offence that, if committed in Canada, would constitute an indictable offence under an Act of Parliament, or of two offences not arising out of a single occurrence that, if committed in Canada, would constitute offences under an Act of Parliament pursuant to A36(2)(*b*);
- who there are reasonable grounds to believe has committed, outside Canada, an act that constitutes an offence under the laws of the place where the act occurred and that, if committed in Canada, would constitute an indictable offence under an Act of Parliament pursuant to A36(2)(*c*); or
- committing, on entering Canada, an offence under an Act of Parliament pursuant to A36(2)(*d*).

Priority two rankings need not be based on indictable offences. They can also include summary conviction offences.

Following the officer's ranking decision, officers are to place the appropriate priority sticker, either priority one [IMM 5357B] or priority two [IMM 5358B], on the front cover of the file. The sticker must be placed in the top right-hand corner of the front cover.

11 Procedure: Legal impediments that may stay a removal

A48(2) imposes an obligation such that if the removal order is enforceable, the foreign national against whom it was made must leave Canada immediately and it must be enforced as soon as possible.

Statutory and regulatory stays of removal are outlined in A50 and R230 to R234. The courts may also impose stays of removal in individual cases. IRPA has made provision for such stays in A50(a), where removal cannot contravene a judicial order, and in A50(c), concerning a stay imposed by a court of competent jurisdiction. An undertaking given on behalf of the PS Minister during the course of litigation also constitutes a stay of removal.

In some cases, the enforcement of removal orders can be stayed through the statutory and regulatory provisions of IRPA and its Regulations as well as through court-ordered stays. When a stay of removal is applied, through operation of law, the stay renders the removal order not enforceable under A48(1), and the CBSA must defer removal. As a result, the person must not be removed from Canada until they are subject to a removal order that has come into force and is not stayed.

It is essential for the GCMS and/or NCMS systems to be updated when a stay of removal is in place and when it is lifted. Accurate information is paramount to ensuring that a person who is the subject of a stayed removal order is not removed.

There will be occasions when an officer will be uncertain whether a stay of removal applies in a specific removal case. Should this situation arise, officers should consult their supervisor for direction. If the issue is complex, the supervisor may refer the officer to a regional program specialist or regional justice liaison officer as the case may be. Sometimes, these contacts can bring other issues to an officer's attention that may have been overlooked.

The following charts should assist officers in determining when a stay of removal may be appropriate and when stay provisions do not apply, and any exceptions that may be associated with the statutory, regulatory or court-ordered stays.

11.1 Statutory stays of removal

A50 contains provisions to stay the removal of foreign nationals who have been issued a removal order. When a statutory stay is imposed under IRPA, the removal order is not enforceable.

Authority	When a stay applies	When a stay does not apply
A50(a)	**Decision at a judicial proceeding**	For guidelines and scenarios in which an

	directly contravenes the enforcement of a removal order, and the PS Minister is given the opportunity to make submissions A stay of removal applies if a decision made in a judicial proceeding would be directly contravened by the enforcement of a removal order. This stay applies where the PS Minister was given the opportunity to make submissions. For guidelines and scenarios in which an A50(a) stay of removal applies, refer to section 12.	A50(a) stay is not applicable, refer to section 12.
A50(b)	**Imprisonment in Canada** A stay of removal applies when a foreign national is sentenced to a term of imprisonment in Canada. Officers must not enforce a removal order if the foreign national is an inmate of a penitentiary, jail, reformatory or prison, or if they are serving a conditional sentence order in the community.	The stay of removal is effective until the sentence being served is completed. The sentence is completed when the foreign national is released from imprisonment by reason of expiration of sentence, commencement of statutory release or grant of parole. Unless the parole is suspended, terminated or revoked, the removal can take place. Since a conditional sentence order is considered a term of imprisonment, a foreign national serving a conditional sentence order does benefit from a stay of removal.
A50(c)	**Stay of removal granted by the Immigration Appeal Division** A removal order is stayed under A66(b) and A68 until the stay is no longer in force.	There is no stay of removal when: • a permanent resident or foreign national who is on a stay of an appeal against an inadmissibility finding under A36(1) or A36(2) is subsequently convicted of another offence under A36(1) and the stay is cancelled; • the appeal is dismissed; or • the IAD may, on application or on its own initiative, reconsider the appeal and lift the stay of removal.
A50(c)	**Stay of removal by any other court of competent jurisdiction** A removal is stayed if the Federal Court or the Supreme Court of Canada issues an order to stay the enforcement of a removal	An application for a stay of removal does not trigger or constitute a stay of removal.

	order or to bar the PS Minister from carrying out the removal order. The stay order will be in effect until the conditions specified in the order are satisfied. If the provincial court issues an injunction or a stay to prevent removal, removal may be stayed pursuant to A50(a) and possibly A50(c). The stay will be in effect until the conditions of the stay order are satisfied or the order is rescinded. For more information on applications for stays, court-imposed stays and undertakings not to remove, refer to ENF 9, section 4 and section 5.	
A50(d)	**Duration of stay under A114(1)** There is a stay of removal when there is a positive decision to allow the protection of a person described in A112(3). These persons are: • inadmissible on grounds of security, violating human rights or international rights, or organized criminality; • inadmissible on grounds of serious criminality punished by a term of imprisonment of at least two years; • refugee claimants rejected on the basis of section F of Article 1 of the Refugee Convention; or • persons named in an A77 certificate.	A stay of removal is cancelled if the CIC Minister re-examines the case and determines that the circumstances under which the application was allowed have changed and dismisses the application.
A50(e)	**Duration of stay imposed by the Minister** This provision could include discretionary stays where the PS Minister imposes the stay of removal. These stays will be determined on a case-by-case basis and will be assessed by NHQ in accordance with the instruments of delegation. In addition, A50(e) provides for the authority of the PS Minister to	

	impose a stay of removal for temporary suspension under R230 where the country or place presents a generalized risk. For more information on R230, refer to section 11.2 below.	

11.2 Regulatory stays of removal

In addition to the stays provided for in A50, A53(d) provides authority for the Regulations to stay a removal order. When the Regulations provide for a stay of removal of foreign nationals, the removal order cannot be enforced.

Authority	When a stay applies	When a stay does not apply
R230	**Temporary suspension for generalized risk** A temporary suspension of removal (TSR) will be imposed where return to a specific country or place presents a generalized risk that the PS Minister considers dangerous and unsafe to the entire general civilian population of that country or place. The PS Minister will make the decision by a formal process. When a decision is made to suspend the removal to a particular country, this decision will be announced to all offices. For a list of the countries under a temporary suspension of removals, refer to: http://www.cbsa-asfc.gc.ca/security-securite/rem-ren-eng.html?wbdisable=true *Note: Generalized risk is different from Individualized risk assessed during Immigration and Refugee Board (IRB), H&C, and PRRA assessments. Section 13.4 describes the differences between the two.*	The stay of removal under this provision does not apply to classes of persons who: • have been found inadmissible on grounds of security under A34(1); • have been found inadmissible on grounds of human or international rights violations under A35(1); • have been found inadmissible on grounds of serious criminality under A36(1) or on grounds of criminality under A36(2); • have been found inadmissible on grounds of organized crime under A37(1); or • have been excluded by the Refugee Protection Division by reason of section F, Article 1 of the Refugee Convention. • wish to return to their country of risk and inform the Minister in writing that they consent to their removal. Under R230(2), the PS Minister may cancel the stay if the circumstances of generalized risk to a specific country or place no longer pose a risk to the entire civilian population of

		that country or place.
R231	**Judicial review of a Refugee Appeal Division decision** A stay of removal will occur when a person files an application for leave to commence judicial review of a decision of the Refugee Appeal Division. This applies to both failed DCO and non-DCO refugee claimants. The stay of removal will continue to apply until leave is granted and until the court of last resort has disposed of the judicial review proceeding, if applicable. The removal is stayed when the person or their counsel presents an officer with a certified copy of an application for leave to commence judicial review of an RAD decision or when the officer is so advised by the Department of Justice. This stay pursuant to R231 will normally be reflected in the GCMS litigation (LIT) screen as a stay required by the Act/Regs.	The stay provision does not apply to classes of persons who: • is a designated foreign national; • are the subject of a removal order because they are inadmissible on grounds of serious criminality under A36(1); • reside or sojourn in the United States or St. Pierre and Miquelon and are the subject of a report under A44(1) at the POE only; or • have filed an application for an extension of time to file a leave application. The stay of removal is effective until the earliest of the following: • the application for leave is refused; • the application for leave is granted, the application for judicial review is refused and no question is certified for the Federal Court of Appeal; • a question is certified by the Federal Court and the appeal is not filed within the time limit; • a question is certified by the Federal Court, the Federal Court of Appeal dismisses the appeal, and the time limit to file an application for leave to the Supreme Court of Canada (SCC) has expired and no application has been made; • an application for leave to appeal a decision of the Federal Court of Appeal to the SCC is made, and the application is refused; or • the application to the SCC is granted, but the appeal is not filed within the time limit or the SCC dismisses

		the appeal. **For further information on judicial review processes, refer to ENF 9.**
R232	**PRRA** A stay of removal applies when an officer notifies a person that they are eligible to make an application for protection under A112(1) of the Act for the PRRA program. A person is notified that they can make an application for PRRA when: • an officer provides the person with a PRRA application form in person; or seven days have elapsed since the application form was mailed to the person at the last address they provided to the CBSA. In order for the stay of removal to continue, an application for protection must be received by IRCC within 15 days after the notification is given pursuant to R162.	The stay of removal is effective until the earliest of the following dates: • when an officer receives written confirmation from the person that they do not intend to make an application; • the person does not make an application within 15 days after being notified; • a negative decision of the application has been made; or • a person receives a positive PRRA decision and receives permanent resident status or their application for permanent resident status is refused. Subsequent PRRAs will not benefit from a stay. Note, this applies to cases where the PRRA was previously declared withdrawn or abandoned. PRRA applications filed at the POE will not result in a stay of the removal.
R233	**H&C or public policy considerations** A stay of removal occurs when the grounds for H&C considerations on an application for permanent residency have been approved in principle. *Note: Public policy considerations are an element of immigration policy. Public policy may be included in the consideration of exceptional cases. For more information on H&C applications, see IP 5, section 5.*	There is no stay of removal where: • there is only an intention to apply for H&C; or • there is an outstanding H&C application that has not been approved in principle by the CIC Minister. The stay of removal is effective until the person is granted, or refused, permanent resident status.

12 Procedure: Application of A50(*a*) stays of removal

12.1 Overview of A50(*a*) stays of removal

A50(*a*) will affect whether the CBSA can enforce removal orders where there are other judicial proceedings pending against a person subject to a removal order. A50(*a*) was not enacted to extend a benefit to persons who may be subject to probation orders, interim release orders as a result of pending criminal charges or other court orders. Its purpose is to provide direction to officers where there is a conflict between removal orders and decisions made in judicial proceedings. By virtue of A50(*a*), the enforcement of a removal order is deemed subservient or secondary to a decision made in judicial proceedings and to the proper administration of justice.

In order for A50(*a*) to apply, the following conditions must be met:

- a decision was made (including final judgements and interlocutory orders);
- in a judicial proceeding (a proceeding in a legally constituted court);
- at which the PS Minister was given the opportunity to make submissions; and
- this decision would be directly contravened by the enforcement of the removal order.

If these conditions do not exist, then an A50(*a*) stay of removal is not in effect and the removal order should be enforced as soon as possible. In order to determine whether the decision that was made at a judicial proceeding would be directly contravened by the enforcement of a removal order, officers must review the individual circumstances, on a case-by-case basis, to determine whether removal would contravene the decision. To ensure consistency in the application of an A50(*a*) stay with respect to decisions made at judicial proceedings, officers should contact their manager, supervisor or regional justice liaison officer for further guidance.

Since each case must be evaluated on its individual circumstances, officers should be aware of the complexity of A50(*a*) and must also consider R234 when determining the applicability of the stay provision.

When making removal arrangements, officers may encounter situations where persons will invoke the statutory stay provisions in A50(*a*) in an effort to prolong their stay in Canada or avoid removal altogether. In order to ensure that removals are not unduly delayed or unlawfully carried out, officers should carefully assess each situation to ensure proper and correct processing. The following case circumstances should be used as a guideline only and may be of assistance when determining the applicability of A50(*a*). If the case scenario is not described below, officers should consult their regional justice liaison officer, regional program specialist, manager or supervisor for assistance to ensure the consistent application of A50(*a*).

For more information on the application of A50(*a*) to different scenarios, see the examples in sections 12.2 to 12.13 below.

12.2 Person under removal is the subject of a probation order

Note: A50(a) does not apply.

The Federal Court of Appeal decision in *MCI v. Cuski* decided that the goal of the enforcement of a removal order is to remove persons from Canada as soon as possible. The goal of removing persons who are the subject of a removal order is more important than the need to satisfy the terms of probation orders, the purpose of which is to integrate people back into the community.

When removing a person subject to a probation order, officers should take the following steps:

- advise the person and/or counsel that probation orders do not create a situation where a statutory stay exists, and then proceed with removal arrangements; and
- ensure that the regional Department of Justice is contacted if counsel indicates that they intend to file before the Federal Court to stay the removal.

12.3 Person subject to a removal order has pending criminal charges

Note: A50(a) may apply.

If there is an indication that the person has pending criminal charges, officers should communicate with the provincial or federal Crown, as the case may be, to determine if a statutory stay exists pursuant to A50(*a*).

If a statutory stay applies, then officers should ask the Crown to either withdraw or stay the criminal charges in order to allow for the expeditious removal of the individual concerned. Officers should inform the Crown that the CBSA has an obligation to carry out removals as soon as possible, i.e., if such persons pose a danger to the public. If the Crown agrees, in writing, to withdraw or stay the criminal charges, either before or after removal is confirmed, the officer will document the file accordingly and proceed with the removal arrangements. Under R234(*a*), a statutory stay does not exist where there is an agreement between the Attorney General and the CBSA to withdraw or stay criminal charges once the CBSA confirms that a subject has been removed from Canada.

If a statutory stay exists and the Crown does not stay charges, officers should document the file accordingly and update GCMS and NCMS to indicate that removal is stayed until the criminal matter is dealt with. Officers should monitor these files as the particular circumstances of the case may change and a statutory stay may no longer apply.

12.4 Person under removal is the subject of a subpoena to appear as a witness in criminal proceedings

Note: A50(a) provisions may apply.

Officers may also encounter situations where the person being removed is the subject of a subpoena or summons obliging them to appear as a witness at a criminal trial or in other criminal proceedings.

A criminal subpoena/summons is a command by the court to the person to appear as a witness at subsequent criminal proceedings.

Before proceeding with removal in these circumstances, the officer in charge of the removal should obtain as much information as possible (from either the Crown attorney or defence counsel as the case may be) in order to determine whether removal is prohibited pursuant to A50(*a*) and, if so, whether it is possible to have the subpoena cancelled or, alternatively, whether the person's return to Canada after removal should be facilitated in order to allow the person to comply with the subpoena. The following should be considered:

- whether the Crown or defence would be willing to withdraw/cancel the subpoena or use alternative means of testifying. [R234(*b*) confirms that no statutory stay exists where there is an agreement between the Attorney General and the CBSA to cancel or withdraw a subpoena once the CBSA confirms that a subject has been removed from Canada];
- if defence counsel does not want to withdraw the subpoena, the CBSA may request that the Crown apply to quash the subpoena;
- if not, and the person is capable of returning to Canada at their own expense, the CBSA may consider whether officers will facilitate the person's return to Canada, with the appropriate conditions, for the purpose of complying with the subpoena. Before removing a person in this situation, officers should discuss the circumstances with the Crown;

- if a statutory stay exists, then the file should be documented accordingly with appropriate remarks in GCMS and NCMS. The officer should monitor the file to ensure that the person concerned is removed from Canada after completing their testimony and/or is no longer required for the judicial proceeding.

Where there are compelling reasons to remove the person and it has been decided to proceed with removal and facilitate the person's return to allow compliance with the subpoena, the file will be documented accordingly. In addition, the appropriate entry will be made in GCMS or in NCMS, where available, and the file will be carefully monitored to ensure that removal is carried out at the appropriate time and without delay. As well, the person concerned, their counsel or the Crown attorney (as the case may be) will be kept informed, as required. In addition, the regional Department of Justice (Immigration Section) will be given advance warning of the removal arrangements in order to prepare for any anticipated stay motion before the Federal Court.

12.5 No subpoena but person under removal is required to appear as a witness in criminal proceedings

Note: A50(a) provisions do not apply.

Officers may occasionally encounter situations where the subject of the removal order is required as a witness in a criminal proceeding but is not subject to a subpoena or a summons. In some cases, the CBSA may receive written communication from either the Crown attorney or the defence counsel to the effect that the person to be removed is required to testify in a criminal proceeding. Prior to IRPA implementation, paragraph 50(1)(*b*) of the former *Immigration Act*, 1976, applied; however, this paragraph has not been incorporated into IRPA.

Consequently, it is the CBSA's position that since no court order exists, the provisions of A50(*a*) do not apply. The appropriate party and the Crown should be so advised, and removal will proceed in the normal manner. The regional Department of Justice (Immigration Section) will be given advance warning of the removal arrangements in order to prepare for any anticipated stay motion.

12.6 Person is subject of an appearance notice given by a peace officer in a criminal matter

Note: A50(a) provisions do not apply.

It is the CBSA's opinion that an appearance notice (Form 9 s. 493 of the *Criminal Code*) issued to a person by a peace officer does not create a stay pursuant to A50(*a*) as long as the appearance notice has not been reviewed by a judge. A peace officer in this specific case is not a *judicial officer* for the purposes of A50(*a*) and thus their decision does not fall within the parameters of a judicial proceeding. In these specific cases, a client has not been detained or charged for a crime nor has the client gone before a judicial body or tribunal such as a justice of the peace. Instead, the client is required to report to court to answer charges not yet laid against them.

If the person was issued an appearance notice and failed to comply with the conditions in Form 9, a bench warrant may be issued. If a bench warrant exists, officers should consult the Crown before removing such persons.

Should this specific type of case arise, officers should follow the procedures outlined in section 12.3 above and inform the person if the CBSA is proceeding with removal. Before removal, officers must discuss the case with a supervisor and/or contact the regional justice liaison officer. The appearance notice is currently under review and the case circumstances should be examined carefully before such persons are removed. Depending on the specific details of the case, a supervisor or regional justice liaison officer may ask the officer to contact Crown counsel to seek a stay of proceedings. If not, the officer should proceed with removal and keep the regional

justice liaison officer advised if counsel indicates they will be filing a stay application to prevent removal.

12.7 Person under removal is subject of a civil summons or a subpoena

Note: A50(a) provisions may apply.

Periodically, officers may encounter situations where a person being removed is the subject of a subpoena or summons and is required to testify at a civil trial (non-criminal proceeding). The CBSA has taken the position that, where a summons or subpoena is issued by a court clerk or a registrar, it does not constitute a decision in a judicial proceeding, and a stay under A50(*a*) does not apply. However, the CBSA is reviewing other similar circumstances to determine whether a civil subpoena or summons would be considered a judicial proceeding in the application of A50(*a*).

Before proceeding with removal action, officers should carefully review the civil summons or subpoena to determine whether removal is prohibited pursuant to A50(*a*), taking into account the CBSA's position. If officers are uncertain as to whether a document constitutes a decision made in a judicial proceeding as contemplated by A50(*a*), they should consult their supervisors and/or refer such cases to their regional justice liaison officer, regional program specialist, manager or supervisor, as the case may be. In cases where it appears that a person is invoking this stay provision solely to delay the removal process, this information should be brought to the attention of the regional justice liaison officer, regional program specialist, manager or supervisor.

12.8 Person under removal is subject to a civil court order

Note: A50(a) provisions may apply.

In some cases, the person may be the subject of a court order requiring them to appear at a trial involving civil proceedings (i.e., relating to family and/or custody issues, etc.) or other civil court order which may affect the ability to remove them. As such, a civil court order will constitute "a decision made in a judicial proceeding," and A50(*a*) may apply, depending on whether enforcing the removal order will directly contravene this decision.

Before proceeding with removal action, officers should carefully review the civil court orders to determine whether removal is prohibited pursuant to A50(*a*), taking into account the interpretation outlined in this document. If officers are uncertain as to whether a document constitutes a decision made in a judicial proceeding as contemplated by A50(*a*), they should consult their supervisors and/or refer such cases to their regional justice liaison officer. Cases in which it appears that persons are invoking this stay provision solely to thwart the removal process should be brought to the attention of the regional justice liaison officer.

12.9 Person under removal is subject of a notice of examination in a lawsuit (discovery process)

Note: A50(a) provisions do not apply.

In the case of *Shulgatov et al v. MCI* , a Federal Court judge dismissed a stay application by ruling that notices of examination in civil suits did not create a statutory stay pursuant to paragraph 50(1)(*a*) of the former *Immigration Act*, 1976. The principal applicant in this case was involved in a serious motor vehicle accident and was both the plaintiff and the defendant in the pending law suits. The judge ruled that a notice of examination during the discovery process of a lawsuit does not constitute an order made by a judicial body and therefore does not result in a statutory stay of removal. Upon further review, it is the CBSA's opinion that a notice of examination in a lawsuit does not constitute a decision in a judicial proceeding for the purposes of A50(*a*). There is no statutory stay.

Officers should consult their supervisors and/or refer such cases to their regional justice liaison officer or other similar officer when counsel claims that a statutory stay applies and that removal is prohibited. If the regional justice liaison officer or other similar officer is satisfied that no statutory stay exists, then officers should advise counsel and proceed with removal. They should also ensure that the regional justice liaison officer is aware of the removal actions if counsel intends to file a stay application.

12.10 Person under removal has a court date for a legal name change

Note: A50(a) provisions do not apply.

In the case of *Louis v MCI*, 2001, a Federal Court judge dismissed a stay application by the applicant, who claimed that he had to appear in superior court for a motion to legally change his name on a marriage certificate. The applicant filed the motion only after he was told he was being removed from Canada. The Court concluded that the provisions of paragraph 50(1)(*a*) of the *Immigration Act*, 1976, do not apply in these circumstances, where the applicant could decide for himself the date of his appearance in court and could have decided not to present the motion. Consequently, it is the CBSA's opinion that these types of judicial matters do not invoke a statutory stay pursuant to A50(*a*).

12.11 Person under removal is subject of a conditional sentence order (CSO)

Note: A50(b) provisions apply.

Individuals who are serving a conditional sentence order benefit from a stay of removal in accordance with A50(b). This determination is the result of extensive research and detailed consultations with both the CBSA and IRCC Legal Services.

A50(*a*) specifies that a removal order is stayed in the case of a foreign national sentenced to **a term of imprisonment** in Canada, until the sentence is completed. Since a conditional sentence order is considered to be a term of imprisonment, it constitutes a stay of removal even though the individual is not incarcerated or detained in any penitentiary, jail, reformatory or prison. As such, officers must not enforce a removal order while the individual is serving a conditional sentence order. If the person leaves Canada during the term of the conditional sentence order, the officer should follow the procedures to confirm departure outlined in section 29, for cases where departure occurs prior to the order not coming into force.

12.12 Person under removal is subject of an RPD summons

Note: A50(a) provisions do not apply.

In the case of *Gillani v. MCI*, the applicant was the subject of a subpoena for a Convention Refugee Determination Division (CRDD) matter and sought a stay of removal. The Federal Court Trial Division dismissed this application as it ruled that the applicant failed to raise a serious issue. Consequently, the CRDD was not a judicial body for the purposes of the former *Immigration Act,* 1976.

The CBSA is of the position that a summons issued by the Refugee Protection Division is not considered a decision at a judicial proceeding for the purposes of A50(*a*) and a stay of removal does not apply in this circumstance. Deferral of removal in these types of cases may encourage abuse of the summons process and may make it more difficult for the CBSA to remove persons in these similar circumstances in the future.

Officers should inform the person and their counsel that removal is proceeding, as there is no statutory stay of removal. They should also keep their regional justice liaison officer or other similar officer advised if counsel indicates that they will be filing a stay application to halt the removal.

12.13 Requests for deferral from other enforcement agencies

Note: A50(a) provisions do not apply.

Periodically, the CBSA may receive requests to delay removals from other enforcement agencies that do not fall within the parameters of the A50(a) provision or other stay provisions in the IRPA or Regulations. Such cases should always be referred to the supervisor or manager, who will decide whether or not to defer removal, based on the particular facts of the case and the CBSA's interest in being cooperative with other enforcement agencies that share similar interests, goals and concerns. A decision to defer removal in these circumstances will be an administrative one and will not fall under the A50(a) provisions. Officers should document the file accordingly and update NCMS. The file should be monitored to determine if the enforcement agency still requires the person to remain in Canada. Once the enforcement agency no longer requires the person, removal should occur as soon as possible.

13 Procedure: TSRs

13.1 Legislation

The IRPA provides the Minister of PS with the specific legal authority to temporarily suspend or reinstate removals according to changes in country conditions.

Imposing a TSR under R230(1):

Regulation 230 outlines the basic criteria for determining whether to maintain or suspend removals to a particular country:

> **230(1)** The Minister may impose a stay on removal orders with respect to a country or a place if the circumstances in that country or place pose a generalized risk to the entire civilian population as a result of
>
> a. armed conflict within the country or place;
> b. environmental disaster resulting in a substantial temporary disruption of living conditions; or
> c. any situation that is temporary and generalized.
>
> Cancellation
>
> **230(2)** The Minister may cancel the stay if the circumstances referred to in subsection (1) no longer pose a generalized risk to the entire civilian population.

13.2 Exceptions

230(3) The stay does not apply to a person who

a. is inadmissible under subsection 34(1) of the Act on security grounds;
b. is inadmissible under subsection 35(1) of the Act on grounds of violating human or international rights;
c. is inadmissible under subsection 36(1) of the Act on grounds of serious criminality or under subsection 36(2) of the Act on grounds of criminality;
d. is inadmissible under subsection 37(1) of the Act on grounds of organized criminality;
e. is a person referred to in section F of Article 1 of the Refugee Convention; or
f. informs the Minister in writing that they consent to their removal to a country or place to which a stay of removal applies.

For cases that fall under paragraph 230(3)(f), the Officer should have the individual complete a statutory declaration stating that they are voluntarily returning to their home country despite the TSRs.

Note: For the above-mentioned exceptions, there is no need to consult NHQ in order to proceed with removal.

13.3 Policy

Temporary suspensions of removals are just that – temporary. Once the situation in the country improves, the suspension should be lifted and removals should be reinstated.

The decision to lift a TSR is based on a careful assessment of the conditions of the country in question. The CBSA reviews country conditions regularly and recommend to the Minister of PS whether to lift or impose a TSR.

This process includes consulting other government departments including IRCC, Global Affairs Canada, CBSA Liaison Officers and Canadian missions abroad, the United Nations High Commissioner for Refugees, and non-government organizations such as Amnesty International and the Canadian Council for Refugees.

Until a TSR is lifted by the Minister of PS, individuals from these countries are eligible to work or study in Canada provided they apply for such permit.

13.4 Generalized risk versus Individualized risk

The guiding principle of generalized risk is that the impact of the catastrophic event is so pervasive and widespread that it would be inconceivable to conduct general returns to that country until some degree of safety is restored. A TSR is not appropriate for countries with persistent and systemic human rights problems, which constitute individualized risk, a process covered by individual protection mechanisms such as the refugee determination process**,** the PRRA and the H&C review process.

In addition, even though a situation of human rights violations may be widespread and long-standing, it is an ongoing situation that is outside the scope of a sudden, catastrophic event which temporarily throws a country into crisis. When evaluating general risk, considerations such as fear of persecution or personal risk to individuals ordered removed or returned to their country are not part of the process. A TSR is not supplementary nor a substitute for protection mechanisms that assess individual risk.

13.5 Countries under TSRs

For a list of countries that are currently under a TSR, please contact RemovalsNHQ-RenvoisAC@cbsa-asfc.gc.ca:

14 Procedure: Diplomatic assurances cases

Canada does not impose the death penalty in any circumstance. Canadian courts view this type of punishment as an unlawful sanction that violates a person's right to life under the Charter of Rights and Freedoms. If it is determined that a person under removal order faces more than a mere possibility of charges punishable by death, diplomatic assurances may be sought.

Policies and procedures are currently being developed with IRCC. In the interim, the officer should contact CBSA Case Management for further information.

15 Procedure: Interim Measures and Precautionary Measures Requests

Canada is signatory to several human rights treaty bodies and has accepted the jurisdiction of these organizations to hear individual complaints lodged against Canada. Complaints involving immigration or protection issues can result in a treaty body asking Canada to refrain from removing the person concerned until it has considered the complaint thoroughly. The request is called an interim measures request or precautionary measures request, depending on the treaty body.

The CBSA cannot proceed with removal if an interim measures request has been made. Only the Minister of Public Safety can make a determination if a stay is warranted under s. 50(e) of IRPA. If the Minister declines to issue a stay of removal, the CBSA may once again proceed with removal.

The Federal Court has confirmed that interim measures and precautionary measures are not legally binding on Canada. (Mugesera). However, Canada engages in good faith with the treaty bodies and gives requests/decisions serious consideration and tries whenever feasible to comply with them while ensuring that the integrity of Canada's immigration and refugee protection processes are maintained.

15.1 Who can make an interim measures or precautionary measures request

As per s. 3(3)(F) of IRPA, the Act is to be construed in a manner that is consistent with any human rights treaties that Canada is a signatory to. There is a presumption by the international community that Canada will abide by interim measures requests. However, each case is examined on its merits and the decision to issue a stay or not is at the discretion of the Minister.

The treaties and the bodies that can request a stay of removal are:

Treaty	**Treaty Body**
The Convention on the Elimination of All Forms of Discrimination Against Women(CEDAW)	Committee for the Elimination of Discrimination Against Women (CEDAW)
United Nations Convention Against Torture (UNCAT)	United Nations Committee Against Torture (CAT)
International Covenant on Civil and Political Rights (ICCPR)	United Nations Human Rights Committee (UNHRC)
The American Declaration of the Rights of Man *This is the treaty that allows for precautionary measures.*	Inter-American Commission on Human Rights (IACHR)—*this is a branch of the Organization of American States (OAS)*

15.2 Roles and Responsibilities

CBSA is tasked with deferring the removal once an interim measures request has been received, preparing the briefing and consultation for the Minister's decision, and executing the removal should the Minister opt not to issue a stay.

The Litigation Management Unit (LMU) of the CBSA communicates on behalf of the partners to the CBSA removals teams in the regions, as well instructing Justice on the CBSA and Public Safety's position in Canada's submissions to the treaty bodies.

15.3 Procedures

CBSA LMU will update GCMS that an interim measures or precautionary measures request has been received, and that removal cannot proceed without the direction of the Minister of Public Safety. Notification to the appropriate regional Justice Liaison Officer, as well the removals chief or manager, if possible, will also occur to ensure they are aware that removal arrangements will need to be cancelled. The regional office must confirm with LMU that the removal has been cancelled.

If the Minister approves the stay, the region is once again notified that removal will not proceed until further notice. When the treaty body provides its final views, the partners will re-evaluate the case and determine next steps.

If the Minister does not approve a stay, LMU will advise the region that removal can proceed and GCMS will be updated accordingly.

Occasionally, the person concerned or counsel will present the diplomatic note requesting interim measures from the treaty body to the removal officer before Canada has received official notification. In this instance, the removals officer should contact LMU immediately (litigation-management@cbsa-asfc.gc.ca), and steps will be taken to verify the authenticity/receive confirmation from GAC/Justice.

PART III – SCHEDULING REMOVAL

16 Procedure: Determining the method of enforcing a removal order

IRPA prescribes that under A48(2), the foreign national against whom the removal order was made must leave Canada immediately after the removal order becomes enforceable, and that it must be enforced as soon as possible.

In accordance with R235, a removal order that has not been enforced does not become void through the lapse of time. However, when a foreign national becomes a permanent resident, the removal order becomes void through operation of law under A51.

Before an officer enforces a removal order, an assessment must take place to determine if the removal order should be enforced through voluntary compliance or by the PS Minister. The *Immigration and Refugee Protection Regulations* codify the determination process as a mandatory procedure. During this process the officer must determine, through interviews with the foreign national, the method (or modality) of enforcing the removal order. The final determination of how the removal order is enforced rests with the officer. Under R237, a removal order can be enforced either through:

- voluntary compliance by the foreign national (see section 17 below); or
- the removal of a foreign national by the PS Minister (see section 18 below).

If the person does not meet the requirements of voluntary compliance, the PS Minister must enforce the removal order.

16.1 Preparing the Confirmation of Departure envelope

After an officer notifies the foreign national that a removal order has become enforceable and the officer has determined whether the person can be removed through voluntary compliance or an enforced removal order, a Confirmation of Departure (COD) envelope must be prepared. When preparing the COD package, officers should:

- Prepare a *Certificate of Departure* [IMM 0056B], and ensure a copy of the foreign national's photograph is affixed to the CBSA copy of the document;
- complete a Notice of Removal and Profile (BSF 560);
- include copies of any airline security notifications and approval;
- include travel document and airline ticket; and
- copy of Direction to Report.

If the removal is taking place at an airport and transportation has been arranged, the package may be forwarded to the airport.

16.2 Procedures to enforce a removal order

For general procedures on the enforcement of a removal order and the verification of departure of a person under a departure, exclusion or deportation order, officers should refer to:

- the criteria for a removal order to become enforced in section 27;
- the procedures to verify departure in section 28;
- the procedures to complete a Certificate of Departure in section 28.1;
- verifying departure at airports in section 28.2;
- verifying departure to the U.S. from airports with pre-clearance facilities in section 28.3;
- verifying departure at land borders in section 28.4; and
- persons refused entry to their country of destination after a Certificate of Departure has been issued in section 34.

17 Procedure: Voluntary compliance

As set out in R238(1), voluntary compliance allows a foreign national, who is the subject of an enforceable removal order to voluntarily remove themselves by appearing before an officer for a determination. The officer's assessment of the individual's circumstances will establish whether the foreign national meets the regulatory criteria set for voluntary compliance. This determination can be made by a CBSA officer either inland or at a POE. The designated authority for approving or refusing voluntary compliance with the enforcement of a removal order under R238 is found in the Designation of Officers and Delegation of Authority documents in IL 3, item 121.

17.1 Requirements for voluntary compliance

Officers must be satisfied that the criteria set out in the Regulations have been met before permitting voluntary compliance with a removal order. Officers must be aware of the factors that will guide them in making a determination on whether the foreign national can depart through voluntary compliance. If a negative determination is made and the officer decides that the foreign national does not meet all of the prescribed criteria for voluntary compliance, the foreign national then becomes subject to removal by the Minister (see section 18 below).

Under R238(1), an officer must be satisfied that the foreign national meets all of the criteria for voluntary compliance through a close examination of the oral and physical information available. In order for a foreign national to depart Canada by voluntary compliance, the foreign national must demonstrate that they:

- have the sufficient means (i.e., financial and transportation arrangements) to effect their departure to a country that will authorize their entry;
- have the intent to voluntarily comply with R240(1)(a), R240(1)(b) and R240(1)(c) by
  - appearing before an officer to verify their departure,
  - obtaining a Certificate of Departure [IMM 0056B] from an officer, and
  - departing from Canada; and
- will be able to act on their intention to comply with R240.

A person does not have to meet the requirements in R240(1)(d) for authorization to enter the destination country after they have departed from Canada. These requirements should be considered during the assessment for voluntary compliance, but are not grounds for refusing a person to leave on their own initiative. If the person does not meet the requirements of R240(1)(d) after departing Canada, they remain the subject of an unenforced removal order. For instructions on the procedures to follow after a person has been refused admission to another country, refer to section 17.3 below.

Submission of a choice country of destination

In addition to the foreign national complying with the voluntary compliance criteria (set out above), they must submit their choice country of destination to the officer [R238(2)]. This process is to ensure that the person is not a danger and is not departing Canada to flee justice here or in another country. To make a determination on these grounds, the officer should conduct background searches [i.e., search of file information, GCMS, the National Case Management System (NCMS), CPIC, the National Crime Information Center (NCIC), Interpol] to determine previous, current or pending criminal involvement. During the voluntary compliance assessment, the officer must approve the chosen country of destination unless

- in the officer's opinion, the person poses a danger to the public,
- the foreign national is a fugitive from justice in Canada or another country, or
- the foreign national is seeking to evade or frustrate the cause of justice in Canada or another country.

If any of the criteria for voluntary compliance are not met, including refusal of a foreign national's choice country of destination, the foreign national must be removed by the Minister (see section 18 below). This ensures that the person is removed to the appropriate country where they are wanted.

17.2 What happens after voluntary compliance requirements are met

When voluntary compliance is met at the POE, the officer should proceed to enforce the removal order and verify the departure of the foreign national from Canada.

When an officer determines that a foreign national meets the requirements of voluntary compliance under R238, the officer should take the following steps:

- counsel the person to settle their personal affairs and transportation arrangements as they are required to leave as soon as possible;
- advise the person on their requirement to report to a BSO to have their removal verified;
- in cases where the person is under a deportation order, advise the person on their requirement to report to an officer at a POE to have their fingerprints and photograph taken;

- when appropriate, give the foreign national a removal order information kit (see section 16.2 above) that includes instructions for the foreign national to verify departure, the consequences of not verifying departure, the consequences of a deportation after the lapse of the 30-day applicable period for departure orders, and the addresses and hours of the POEs that the foreign national should use;
- for control purposes, advise the appropriate POE in advance to ensure that the office is aware that the foreign national will be departing Canada through that POE on an intended date; and
- for security purposes, and if necessary, send the POE the "Envelope: Removal Documents" [IMM 1226B] including the person's passport/travel document, IMM 0056B, etc., before the person appears at the POE to verify their departure.

Once the foreign national appears before an officer at the POE, that officer should verify the departure (see section 13 below) of the foreign national from Canada.

Note: A foreign national who has been authorized to depart Canada voluntarily and has failed to leave as required may be the subject of a warrant for arrest for removal and should be counselled accordingly [A55]. For further information on the issuance of a warrant for arrest, refer to ENF 7*.*

17.3 What happens when voluntary compliance requirements are not met

When a foreign national does not want to depart Canada voluntarily or does not meet the requirements for voluntary compliance under R238, the officer, either at the inland office or POE, should take the following steps:

- consider whether arrest and detention is appropriate in order to effect removal by the Minister;
- contact the appropriate law enforcement authorities if the person is fleeing justice in Canada; and
- make further arrangements for removal by the Minister (see section 18 below).

18 Procedure: Removal by the Minister

R239 sets out mandatory criteria for the enforcement of a removal order by the Minister. The delegated level of authority for deciding whether a removal order shall be enforced by the Minister can be found in the Designation of Officers and Delegation of Authority documents in IL 3, item 200.

Officers inland or at a POE must decide whether a foreign national will be removed by the Minister and proceed with removal arrangements when

- a foreign national did not enforce their removal order through voluntary compliance,
- an officer has determined that voluntary compliance is not allowed, or
- a foreign national's choice country of destination for voluntary compliance has not been approved because they are a danger to the public, a fugitive from justice in Canada or another country, or are seeking to evade or frustrate the cause of justice in Canada or another country.

When determining the country to which the foreign national should be removed, the Minister has the authority to remove the foreign national to any of the countries outlined in R241(1). The countries to which a foreign national can be removed include the following:

- the country from which they came to Canada;
- the country in which they last permanently resided before coming to Canada;
- a country of which they are a national or citizen; or
- their country of birth.

18.1 Removal to another country

If it is determined by an officer that the foreign national is unable to return to any country listed in R241(1) because that country will not authorize their entry, R241(2) allows the Minister to

- select any country that will authorize the entry of the person within a reasonable time, and
- remove the foreign national to that country.

Note: The delegated level for selecting another country, other than those described in R241(1), that will authorize the person's entry is at an executive or managerial level, depending on the particular region. For further information on the delegated authorities to perform this function, refer to IL 3.

18.2 Country of removal for persons who have violated human or international rights

In the case of a person who is the subject of a removal order based on inadmissibility grounds for violating human or international rights under A35(1)(a), the person must be removed by the Minister in accordance with R241(3) to a country that the Minister determines will authorize their entry.

This provision allows the Department to have greater control over the removal of these serious cases.

Note: The delegated level of authority for selecting a country that will authorize the person's entry is at an executive or managerial level, depending on the particular region. For further information on the delegated authorities to perform this function, refer to IL 3.

19 Procedure: Removal of persons who are detained

Officers should be aware of the enforcement procedures to be followed when a permanent resident or foreign national is in a correctional institution or other detention facility.

Officers can remove detained persons from Canada who:

- are in CBSA custody after being delivered by an institution at the end of their period of incarceration under A59;
- have been arrested and detained under A55(1) or A55(2) or A58(2) for removal from Canada; or
- have been detained pursuant to A81 and ordered released under A82.4 for their departure from Canada.

Officers must remove detained persons as expeditiously as possible and take care to determine if there are any factors such as legal and non-legal impediments that could prevent the enforcement of the removal order. It is important that officers do not remove a person who is subject to a stay of removal under A50(*b*), where they are serving a sentence in Canada, including a conditional sentence order being served in the community, until the sentence is complete. For further information on stays of removal, refer to section 12.

Transitional provisions will prevail for many years when an inmate is sentenced prior to the enactment of IRPA. In these cases, the procedures under the former *Immigration Act*, 1976, will apply.

For inmates sentenced after the coming into force of IRPA, the new provisions of the *Corrections and Conditional Release Act* will apply, as the presence of a removal order will render the inmate ineligible for unescorted temporary absence or day parole until the full parole eligibility date. For further information on persons serving sentences subject to enforcement action, refer to ENF 22.

20 Procedure: File review and pre-removal interview

When the removal order becomes enforceable, the officer planning the removal should perform a final review of the file before conducting a removal interview. The officer should take particular note of the person's case history in order to assess the safety and security of all individuals who will be involved in the removal. In conducting this assessment, the officer should consider the person's psychological, behavioural and criminal history. The officer's evaluation of risk should be noted in the file and in NCMS. During the removals process, the *Removal Checklist and File Audit* form [BSF 522] should be continuously updated as information is received. Case updates should always be input into the "Removal Checklist" screens in GCMS and NCMS.

In cases where the person subject to the removal is a minor, the officer must ensure that a competent representative accompanies the minor during the interview.

The pre-removal interview should establish whether or not the person meets the voluntary compliance (section 17) criteria or whether the person should be removed by the Minister (section 18).

Before being removed from Canada, the person should be asked to attend a pre-removal interview at the CBSA office. If necessary, the pre-removal interview may take place in the detention facility. During the pre-removal interview, officers should:

- update the person on the status of their case;
- advise them that the removal order is enforceable and that they are to be removed from Canada;
- seek the person's assistance in obtaining a travel document and any other information that may be required;
- notify the person of the opportunity to make an application for a PRRA, if applicable;
- make a determination to allow voluntary compliance or removal by the PS Minister;
- in the case of a person who has been authorized by an officer to depart Canada voluntarily, advise them that they must leave Canada immediately and enforce their order as soon as possible. Officers may allow a person subject to voluntary removal some time to organize their personal affairs before departing from Canada (two to three weeks should be sufficient);
- if they have reasonable grounds to believe the person will not appear for removal, consider arrest and detention of the person under A55; and
- counsel the person on the consequences of the removal order, the effect of the removal order, the requirements to return to Canada and the consequences of non-compliance (see section 34).

Note: In the case of a detained person, removal arrangements should be made as expeditiously as possible to minimize detention costs.

If the person fails to appear either at their pre-removal interview or at the POE on the scheduled date of removal, a warrant under A55(1) may be issued for removal and a warrant package sent to WRC for entry into CPIC. Appropriate information should also be input into GCMS and NCMS. Further details are available in ENF7, Investigations and Arrests.

21 Procedure: Seizure of documents

A140(1) authorizes an officer to seize and hold any means of transportation, document or other thing if the officer believes, on reasonable grounds , one of the following:

- that the means of transportation, document or other thing has been fraudulently or improperly obtained or used;
- that seizure is necessary to prevent its fraudulent or improper use; or
- that the seizure is necessary to carry out the purposes of the Act and Regulations.

21.1 When to seize documents

For inland cases, seizure of identity and travel documents should occur when the person becomes the subject of enforcement action. For information on when to seize documents, refer to ENF 12, sections 9.4 to 9.7.

21.2 Documents seized by other agencies

For information on obtaining documents that have been seized by other agencies and would be of use for removal action, refer to ENF 7.

21.3 Disposal of seized documents

After the officer removes a foreign national from Canada, the officer should return any genuine identity or travel documents to the rightful holder.

All seized documents issued by any government department or agency should be returned to the appropriate issuing authority.

For further instructions on the procedures for disposing of fraudulent documents or returning genuine documents issued by various federal or provincial departments, refer to ENF 12, section 11.14.

For information on disposing of social insurance cards, refer to ENF 12.

For further information on returning seized documents, refer to ENF 12, section 11.5.

22 Procedure: Obtaining travel documents

Passports and travel documents for foreign nationals under a removal order can be obtained through regional consulates or through consulates, high commissions and embassies in Ottawa.

Each foreign mission requires a variety of information and documentation. Some missions may insist on a completed application form, while others may require only a letter. Officers should contact the appropriate mission to find out what information is necessary.

If a country does not have an embassy or consulate in Canada, officers should approach the country's embassy in the United States, or the closest geographic equivalent, directly with a request for a travel document. In cases where a country has no representation, or is currently being administered by the United Nations, officers should determine who the appropriate authority is and contact them directly.

When requesting documentation from foreign missions, officers should always request the maximum permissible validity period for the travel document to allow for some flexibility in making removal arrangements. Although each country may have specific requirements when applying for a travel document, requests for travel documents from foreign missions should normally include:

- the foreign national's complete name, date and place of birth, and any other relevant particulars such as education and employment history;
- names, places and dates of birth and the present and/or past address of parents, and similar details, where known, of other family members or close relatives residing in the country;
- the foreign national's last place of residence in the country of citizenship;
- the foreign national's date of arrival in Canada;
- a copy of the removal order. When the removal order is based on criminality, officers should provide details of all known convictions;
- two to four passport-size photographs, one to be certified on the reverse to the effect that it is a true likeness of the person concerned;
- identification documents such as an expired passport, seaman's identity card, birth or baptismal certificate, laissez-passer or other books or documents that might help in establishing the citizenship of the person concerned (be sure to keep a copy on file of all documentation sent to the foreign mission); and
- any other relevant file information (i.e., itinerary).

When determining if a travel document is on file, officers should:

- query GCMS/NCMS for the existence of an original travel document or photocopy;
- review client files to determine whether a formal application for a travel document has been submitted earlier in the enforcement process; and
- action files containing valid travel documents that can otherwise be used to effect removal without delay.

22.1 Obtaining travel documents for detained foreign nationals

It is the CBSA's duty to remove people as soon as possible. Therefore, to avoid prolonged detention of the foreign national, officers must make arrangements to obtain travel documents as quickly as possible.

When officers correspond with a foreign mission, three points should be made clear to the mission:

- that a removal order has been issued and is under appeal or other action;
- that arrangements are being undertaken to obtain a travel document to reduce the period of detention to a minimum, should removal be ordered or directed; and
- that officer(s) will immediately inform the mission if the IAD does not direct removal action or should the foreign national concerned otherwise successfully challenge the validity of the order.

Some embassies and consulates will release travel documents without travel itineraries. Where possible, officers should apply in advance for a travel document.

Officers must give top priority to any correspondence pertaining to a detained foreign national. They should either put a *Detained Sticker* [IMM 0476B] on each piece of correspondence that is sent to NHQ and to the IAD to alert them to the urgency of the case, or note in the correspondence that the foreign national is detained.

Officers should make prompt and reasonable efforts to determine the detainee's citizenship, for the purpose of acquiring a travel document and executing the removal order expeditiously.

22.2 Referrals to National Headquarters

In cases where the officer consistently fails to obtain a travel document from a foreign mission, the case may be referred to the NHQ Removal Operations Unit. Liaison Officers will take the necessary steps to resolve outstanding issues with the relevant authorities or will seek other solutions as required. In some cases, the Global Affairs Canada may be asked to intervene if difficulties in obtaining the necessary travel documentation persist. Cases may be referred by email to:

CBSA-ASFC_Ops_ROCR.UECOR@cbsa-asfc.gc.ca.

As a general rule, cases must be referred for assistance only where officers have attempted on three separate occasions to obtain a travel document and more than 90 days have elapsed since the first application. The 90-day rule exists to help screen out previous referrals that regions are capable of resolving. If a regional program specialist is available, they are another resource that is useful before referring the case. Furthermore, only cases that are removal-ready should be referred. Removal-ready implies that the person's location is known, that reasonable grounds exist to believe the individual can be removed within a reasonable time should a travel document be obtained, and PRRA notification has been given, if applicable.

When a case is referred to NHQ Removal Operations Unit for assistance, primary responsibility for the file remains with the officer who referred the case. The referring officer remains the principle contact for any information and/or action pertaining to the case.

The officer responsible for the case is expected to continue their attempts to obtain a travel document, unless specifically instructed otherwise by NHQ Removal Operations Unit. Officers must inform NHQ Removal Operations Unit immediately of any new developments in the case, especially if an officer succeeds in obtaining a travel document after having referred the case.

When referring a case to the Removal Operations Unit, it is imperative that officers provide all necessary background information.

22.3 Removal without a valid passport

In cases where removal without a valid passport is a possibility, officers should assess the case and discuss it with their supervisor. In some cases, a foreign national may not require a valid passport to enter their country of nationality. Before officers remove a foreign national who does not have a valid passport or travel document, they will need the concurrence of the transportation carrier and any country of transit. In some cases, it may prove difficult for the foreign national to travel without a passport through other countries en route to the final destination.

An officer of the destination country will usually grant admission to a foreign national upon satisfaction that the person is a citizen or national of that country. An expired passport, birth certificate, national identification card, or any other recognized document that contains biographical details of the person may be sufficient.

22.4 Removal without documentation

Although it is not recommended to proceed with a removal without proper documentation, a transportation carrier may accept a foreign national under removal order without documentation if the foreign national is being removed directly back to the country of origin and there are no transit points. Before finalizing travel arrangements, the carrier should be contacted to verify that this is acceptable, and officers should be confident that the destination country is willing to accept the deportee without documents. A *Canada Immigration Single Journey Document* [IMM 5149B] should be completed and used where the country will accept such a document. It is necessary to consult with NHQ Removal Operations for guidance when no travel documents are available and the subject is still being removed.

22.5 Use of a Canada Immigration Single Journey Document

A *Canada Immigration Single Journey Document* [IMM 5149B] should be used only in instances where it is not possible to obtain an authorized travel document or remove an individual on an authorized travel document. Officers should regard the use of an IMM 5149B as an exception to the rule, not as a standard operating procedure. As such, the decision to use an IMM 5149B must be made on a case-specific basis, taking into account all possible complications including the requirements of transit countries. Officers should always seek the concurrence of their manager before removing on an IMM 5149B. This document does not guarantee entry to the destination country, and officers should be aware of the potential for a person being refused entry into that country. Although there is not a list of countries that accept persons removed on an IMM 5149B, as a general rule such removals should not be attempted to countries such as the United States and the United Kingdom.

If the officer and manager are in doubt as to whether an IMM 5149B can be used, they should consult with NHQ Removal Operations. A narrative report should be forwarded by e-mail to CBSA-ASFC_Ops_ROCR.UECOR@cbsa-asfc.gc.ca.

The narrative report should include:

- the reason the IMM 5149B will be utilized;
- the proposed date of removal, itinerary and name of the transportation company;
- the reason for removal;
- the number of escorts to accompany the person and, if determined at time of reporting, the names of any escorts;
- any available supporting documentation such as a birth certificate or expired document; and
- any other information that may be useful.

For further information on the escort requirements for the removal of persons on an IMM 5149B, refer to section 39.8 below.

22.6 Visa requirements

When a foreign national is required to transit a country where a visa is required, an officer must acquire the necessary visa before the foreign national is removed from Canada. Some countries require re-entry visas for their nationals being removed back to their countries.

For specific requirements, officers should refer to the *Travel Information Manual* (TIM), but should consult their manager or supervisor before ordering copies. To order copies of this manual, a written request should be addressed to the International Air Transport Association (Netherlands) Data Publications, P.O. Box 49, 1170 AA Badhoevedorp, The Netherlands.

In some cases, it may be necessary for officers to contact the embassy or consulate directly or to confirm visa requirements with the migration integrity officer directly.

23 Procedure: Notice to transportation companies

Officers should inform the transportation companies responsible for removal as soon as a removal order becomes enforceable. Officers should also provide background details in the advance information so that the carriers can conduct any necessary investigations before removal.

If the transportation companies responsible for removal are air carriers, the information from the officer should also include, whenever possible, a photocopy of the original airline ticket, inbound ticket numbers, routing to Canada, other carriers involved en route, flight numbers and dates. These details will assist in the carriers' acceptance of liability and help them to prorate removal costs to any other carriers involved.

Officers should use the *Notice of Requirement to Carry a Foreign National from Canada* [IMM 1216B] to serve notice officially on an airline of its responsibility to convey the person back to their country. Once the officer has established a travel itinerary, the officer presents the IMM 1216B to airline officials for signature.

For further information on the escort responsibilities of transportation companies, refer to section 42.1 below.

24 Procedure: Counselling on the consequences of the different removal orders

It is essential that when an officer verifies the departure of a foreign national and enforces the removal order that the person is made aware of their requirements should they want to return to Canada.

Officers should be informed of the consequences prescribed to the type of removal order that has been enforced.

24.1 Requirements to return for deportation orders

Under R226(1), all persons who are the subject of an enforced deportation order always require authorization to return to Canada under A52(1). Officers are reminded that a departure order becomes a deportation order, through operation of law, under R224(2) if the foreign national does not meet the requirements to enforce their removal order under R240(1)(*a*), (*b*) and (*c*) within 30 days after the order becomes enforceable. When a departure order has been enforced at a mission outside Canada, within or beyond the 30-day applicable period, all departure orders must be enforced as deportation orders pursuant to R224(2) and require the authorization to return to Canada pursuant to A52(1).

24.2 Requirements to return for exclusion orders

There are two types of exclusion orders:

- exclusion orders issued for a one-year ban; and
- exclusion orders issued for a five-year ban.

Exclusion orders with a one-year ban under R225(1) require a foreign national to obtain authorization to return to Canada under A52(1) if they wish to return within one year after their removal order was enforced.

Exclusion orders with a five-year ban under R225(2) require a foreign national to obtain authorization to return to Canada under A52(1) if they wish to return within five years after their removal order was enforced.

24.3 Requirements to return for departure orders

Departure orders that have been enforced at a POE within the 30-day applicable period under R224(1) do not require a foreign national to obtain authorization to return to Canada under A52(1). Officers should ensure that, if a removal order information kit is issued in Canada, the person is fully counselled that they must meet the requirements of R240(1)(*a*), (*b*) and (*c*) and present themselves before an officer at a POE. The person should be counselled that failure to meet these requirements will result in the departure order becoming a deportation order under R224(2).

24.4 Requirements to return for accompanying family members

Foreign nationals included in removal orders (exclusion or deportation orders) that have been made on the basis that the person is an accompanying family member under A42(*b*) will not require authorization to return to Canada under A52(1). Officers should counsel these persons accordingly pursuant to R225(4) and R226(2).

The files of persons removed under A42(*b*) must not be downloaded into the previously deported person database and will not be placed in CPIC.

25 Procedure: PRRA

The procedures described in this section are intended to guide officers in determining the most appropriate timing for IRCC to do a risk review under the PRRA program (see definition of "PRRA" in section 6 above) for a person with a removal order that is in force.

25.1 Who may apply for a PRRA?

A person in Canada, other than a person referred to in subsection 115(1), may apply to the Minister of Immigration, Refugees and Citizenship Canada for protection under the PRRA provisions if they are subject to a removal order that is in force under A49 or are named in a certificate described in A77(1). For clarification, the following persons may make an application for a PRRA:

- a person who did not previously seek protection;
- a previous post-determination refugee claimant in Canada class (PDRCC) claimant (PDRCC cases are automatically transferred to the PRRA program under the transitional rules in R346);
- certain failed refugee claimants (see 25.2 for those failed claimants who are ineligible to apply for a PRRA);
- an ineligible refugee protection claimant (with exception);
- a person at a POE who claimed protection after a removal order was issued;
- a person inland who claimed protection after a removal order was issued;
- a person named in a security certificate [A77(1)];
- a person described under A112(3)(*a*) or (*b*). This person is the subject of an A44 report for A34(1), A35(1), A36(1) or A37(1) for which a finding was made that determined them inadmissible on these grounds;
- a person described under A112(3)(*c*). The Immigration and Refugee Board has rejected the person's claim for refugee protection based on section F of Article 1 of the Refugee Convention; and
- a person described under A112(3)(*d*). The PS Minister and the IRCC Minister have signed a certificate referred to in A77(1).

When a person is entitled to apply for a PRRA, the officer must complete the "PRRA Initiation" screen in GCMS and NCMS.

25.2 Who may not apply for a PRRA?

There are exceptions to who may apply for a PRRA. The exceptions relate to persons who already have protection or have other means of seeking protection. A person may not apply for a PRRA if they are:

- a person who is the subject of an authority to proceed with extradition;
- a person who is ineligible under A101(1)(*e*) –- Safe third country provision;
- a person who less than 12 months has passed, or in the case of a national of a country that is designated under subsection 109.1(1), less than 36 months has passed since their

claim for refugee protection was last rejected – unless is was rejected under subsection 109(3) or on the basis of section E or F of Article 1 of the Refugee Convention – or determined to be withdrawn or abandoned by the RPD or RAD; and
- a person who less than 12 months has passed, or in the case of a national of a country that is designated under subsection 109.1(1), less than 36 months has passed since their claim for refugee protection was last rejected or was determined to be withdrawn or abandoned by the RPD or the Minister.

Note: IRCC is not under any obligation to assess risk to persons who wish to leave voluntarily and whose removal order is not in force. Therefore, the CBSA does not provide notification of a PRRA to these persons.

25.3 When a person is considered for a PRRA

To determine when a case should be considered for a PRRA, the officer must determine if the removal order meets the criteria under A48(1). This is established by ensuring that there are no impediments to the removal under A49(1), A49(2), A50, R230, R231, or R233. An exception to this would be persons who are incarcerated. For details, see "Persons sentenced to a term of imprisonment," in section 25.5 below.

Once all legal impediments have been overcome, the officer should determine whether removal could be effected pending the acquisition of travel documents, visas and final itinerary arrangements.

The officer responsible for removal arrangements will determine whether a person may or may not apply for a PRRA. Officers should review A112(2), which outline exceptions for making an application for a risk assessment prior to removal. If the person cannot apply for a PRRA under A112(2), the officer will prepare the case for removal and, if requested, verbally inform the person that they are unable to apply for protection. If this person insists on submitting an application, the officer will inform the person that an application will not be supplied, as they do not meet the requirements to apply for a PRRA. Removal arrangements will continue. If the person wishes to access the Federal Court, the officer must not delay removal for a decision by the Court unless a motion for a stay of removal has been granted.

Note: There is no stay of removal when a person is not given notification to apply for PRRA. It is important to update GCMS and NCMS by indicating that the person was not notified of the opportunity to apply for a risk assessment.

25.4 When an individual is ineligible to make a PRRA

In exceptional circumstances, a foreign national will be ineligible to make a PRRA application, however an officer will have determined, in the context of a request to defer removal that the new allegations of risk being raised by a foreign national meet the test set out in the Federal Court of Appeal (FCA) decisions of *Baron* (2009) and *Shpati* (2011). The foreign national must be the subject of an enforceable removal order following the rejection or withdrawal of a refugee protection claim or application for protection, including refugee status that has ceased following a successful application by the Minister under A108 of the Immigration and Refugee Protection Act (IRPA).

In the case of *Shpati*, the FCA confirmed that deferral should be reserved for those applications where:

- failure to defer removal will expose the applicant to the risk of death, extreme sanction or inhumane treatment;

- any risk relied upon must have arisen since the last Pre-Removal Risk Assessment (PRRA) (or since the last risk assessment); and,

- the alleged risk is of serious personal harm.

Note that while this case law provides important guidance, officers nevertheless retain discretion to defer removal in cases where these three elements are not strictly met. For example, new evidence may substantiate an allegation of risk that was previously considered. Similarly, evidence that pre-dates the last risk assessment may arise for which there are reasons it was not presented before the last risk assessment.

In circumstances where an officer concludes that a temporary administrative deferral of removal is warranted, the following must occur:

Step 1: Using the template letter (Annex G), the removals officer prepares and sends the notification to the principal applicant that, in light of the allegations of risk raised: (i) the removal has been temporarily deferred, (ii) the file will be brought to the attention of IRCC for a possible consideration under section 25.1 of the IRPA, (iii) the removal may be rescheduled in accordance with the law, and (iv) there is no action required on the part of the principal applicant until the CBSA notifies of a date to attend a CBSA office.

Step 2: Using the template letter Annex H), the IEO prepares the IRCC notification to include: (i) notice that the removal has been temporarily deferred in light of the alleged risk, (ii) the removals officer's reasons for the deferral (with reference to the applicant's submissions), (iii) notice that the risk allegations are being forwarded to IRCC for a possible consideration under section 25.1 of the IRPA, and (iv) notice that supporting documents are attached, including the Refugee Protection Division (RPD)/Refugee Appeal Division (RAD) and/or previous PRRA decisions, the Basis of Claim (BOC) or the Personal Information Form (PIF) and the evidence from submissions relied upon by the IEO to defer the removal.

Step 3: The removals officer scans and emails the IRCC notification to CBSA Case Management along with the supporting documents (i.e. the submissions relied upon by the IEO to defer the removal).

Step 4: CBSA Case Management forwards the email **with supporting documents** to IRCC Case Review.

Step 5: IRCC considers the CBSA's request to review the file and emails the decision to CBSA Case Management.

Step 6: CBSA Case Management informs the responsible regional office where the deferral of removal originated for appropriate action.

25.5 When to notify a person to apply for a PRRA

There are several trigger points that could decide the timing of the notification for a person to submit a PRRA application. Based on a review of the case and the availability of travel documents, an officer should determine when it would be the most appropriate time to notify the person of the opportunity to apply for a PRRA. Notification can be done in person. This decision is at the discretion of the officer based on an assessment of the case. It is highly recommended that notification be given in person in the majority of cases. The following circumstances include examples of trigger points that officers should consider when assessing the timing for notifying the person to submit a PRRA application:

- a valid travel document is available;

- an expired travel document or valid identity or birth record is available and a *Canada Immigration Single Journey Document* [IMM 5149B] can be used;
- there is no valid travel document, an application for one has been submitted, the respective embassy or mission has approved the application in principle and the travel document is forthcoming; or
- there is no valid travel document and an application is completed and will be submitted to the embassy or mission.

As the CBSA deals with different embassies and missions located in Canada and abroad, officers are subject to their terms when issuing travel documents. As a result, some timelines for receiving these documents can be very short and others may be longer. Most timelines are dependent on whether the person has provided the documents required, while some are delayed for policy and political reasons. For this reason, the officer must have the flexibility to determine when is the best time to inform the person of the availability of a PRRA. It is the CBSA's goal to enforce a removal order as soon as possible after a negative risk decision has been made.

If an officer determines that an in-person interview is required, the person will be contacted to discuss removal arrangements at a time and place to be determined by the officer. The letter of convocation should request that the person bring any identity documents they may possess to the interview. See Appendix B–1 and Appendix B–2 for the sample wording of this letter. If the person does not report for the interview, the officer will forward the file to the Investigations Unit for the appropriate enforcement action.

Persons sentenced to a term of imprisonment

When a person who is serving a sentence, including a conditional sentence order, is subject to a removal order, that removal order is stayed pursuant to A50(*b*) until the sentence is completed. If this person is subject to a removal order that is in force pursuant to A112(1), the officer should assess when is the most beneficial time for the CBSA to notify the person of the opportunity to apply for a PRRA. The CBSA would benefit from an earlier PRRA decision rather than wait until the person is under immigration detention to start the process. This will reduce the detention time, costs and should expedite the removal.

25.6 How to notify a person to apply for a PRRA

The onus is on the Removals Unit to notify the person under a removal order that a PRRA application may now be submitted. The PRRA notification will include the following:

- Notification of PRRA for failed refugee protection claimants (see Appendix C–1) or Notification of PRRA for non-refugee protection claimants (see Appendix C–2);
- a PRRA application and guide; and
- a Statement of No Intention (see Appendix D).

It is preferable that the notification be given in person during the removal interview. However, in some instances it may be more efficient to mail the notification directly to the person or to another CBSA office for pickup. If the person is to pick up the envelope at a CBSA office, the recipient should sign and date an acknowledgement of receipt.

A stay of removal is directly linked to the notification and is triggered when a person is notified by the CBSA that they may make an application for a PRRA.

At the interview, the person will be counselled on the enforcement of the removal order. The officer should then evaluate with the person what other documentation is necessary and should be available to enforce the removal order. If the person provides a travel or identity document, the officer should seize the document and place it on file, as well as update GCMS/NCMS. If there are no travel documents available, the officer should seek the person's cooperation in completing the necessary applications. At this time the officer may impose conditions for reporting purposes.

If the person is eligible and wishes to apply for a risk assessment, the officer must provide the person with an application kit. A guide will explain the time frames as well as other instructions.

If the person does not intend to apply, a Statement of No Intention (see Appendix D) should be signed and dated immediately. Removal can then proceed, as there is no stay in effect.

If the person intends on completing the application, the removal order is stayed. For further information on stay provisions, refer to section 11 and section 12 above. The officer should update the NCMS/GCMS screens when notification is given in order to monitor the time frames for the filing of the application.

Note: It is entirely up to the person concerned to decide whether or not to apply for a PRRA, and no pressure should be made by the officer or anyone else involved to influence a decision one way or the other.

25.7 When a person does not want to apply for a PRRA

For persons not wishing to initiate a PRRA, the Statement of no Intention to apply for PRRA in Appendix D should be signed as soon as possible after notification has been given. This will enable the CBSA to proceed with removal arrangements without waiting 15 days to file the application, as provided for in the Regulations. If the person later wishes to file an application, the kit will be supplied at that time. However, there is no stay of removal to await the decision. Removal arrangements can proceed.

25.8 The application for a PRRA

The person making the application should be instructed to mail the application to the appropriate PRRA Office within 15 days after notification was given. This is also stated in the kit. The PRRA Office is responsible for entering the receipt of the PRRA application into GCMS and NCMS. This is important for determining whether the application was received within the time limit and whether the stay of removal continues.

If the person files an application and submissions following the prescribed period of 15 days after notification, the PRRA Unit will accept the application, update GCMS and NCMS, and make a decision. When an application is submitted beyond the 15-day period, the person will not benefit from a stay pursuant to R164, and removal arrangements can proceed. There may be times when a late application is received and the officer conducting the removal may want to consult with their supervisor or manager on whether the removal should be deferred pending the decision of the PRRA application. The discretion to defer will be left entirely to the Removals Unit and caution must be exercised before proceeding with removal.

All submissions in support of an application must be sent directly by the person concerned to the PRRA Unit. That unit will enter the receipt in GCMS and NCMS. In order for the Removals Unit to remain at arm's length of the PRRA Unit, all applications and submissions must be sent directly to the PRRA Office by the applicant. The Removals Unit must not accept any application or submissions for PRRAs. As well, the removal officer must not interact with the PRRA officer or discuss any pending cases. Any communication between the Removals Unit and the PRRA Office must be done through the coordinators/managers of these units.

25.9 PRRA decision

Pursuant to R164, a decision on a PRRA application will not be made until at least 30 days after notification was given to the person concerned. The PRRA Office will enter the type of decision and the date the decision was rendered into GCMS and NCMS.

All decisions, whether positive or negative, will be sent to the respective Removals Unit. The removal officer will ask the person to come to the office by sending a letter to attend and pick up the decision (see Appendix E). The announcement of the decision will be made at the office

during the removal interview with the officer. The officer should ask the person concerned whether they require the reasons for the decision and, if so, obtain an acknowledgment of receipt of the reasons and decision from the person.

The convocation letter will again remind the person to bring any travel documents (i.e., passport, identity cards, documentation issued by the Canadian government and other pertinent documentation) if these were not previously submitted or seized.

GCMS and NCMS must always be updated to reflect these events.

For more information about PRRA decisions, see sections, 24.10, 24.11 and 24.12 below.

The only circumstance in which a PRRA decision will be mailed directly to the claimant is in POE cases where the person has been returned to the United States to await the outcome of their PRRA decision. In these cases, the decision will be mailed to the address provided on the PRRA application.

25.10 Positive PRRA decision for A112(1) cases

When applicants are advised of a positive PRRA decision, they should be counselled on applying for permanent residency. Information on applications for permanent residency by protected persons can be found in PP 4, section 7.

25.11 Positive PRRA decision for A112(3) cases

If the person is described under A112(3), a positive PRRA decision will stay the removal. For further information on PRRA stays of removal, see section 24.1 above. The person should be counselled on the re-examination of the decision that allowed a stay of the removal pursuant to A114(1)(*b*). For further information on re-examination of a decision, refer to PP 3, section 17.

A re-examination would occur when the officer obtains new information through another source such as a newspaper article, another investigation or a third party. Once this information is obtained, the officer must send the file and the information to the PRRA Unit for a re-examination of the grounds on which the application was allowed.

As a safeguard to ensure that A112(3) cases do not remain in Canada, the officer at the Removals Unit should bring forward the file for review every 12 months to assess whether the case requires a re-examination. The officer will send the file to the PRRA Unit for re-examination by the IRCC Minister's delegate, if deemed necessary.

If the subsequent decision maintains the first decision, the removal is stayed until a further re-examination is made.

A negative decision cancels the stay. The PRRA officer will send the decision to the Removals Unit to be delivered in person during the removal interview. The procedures to follow in the case of a negative decision are explained in section 24.12 below.

25.12 Negative PRRA decision

At the interview, the person will be advised of the negative decision. The person will be counselled on the benefits of voluntary removal and advised that departure from Canada is now imminent. Attention must be given to the type of removal order, and the person should be counselled accordingly on its effect. For information on counselling regarding the effect of removal orders, see section 34. Based on the interview and case details, the officer should assess whether the person will voluntarily report to a specified location for removal on a specified date or whether the person should be detained for removal.

GCMS and NCMS should be updated regularly to capture all events throughout the PRRA process.

25.13 Application for leave and judicial review of a negative decision

A decision by a PRRA officer may be judicially reviewed if the Federal Court grants leave to do so. The filing of the application for leave with the Court does not automatically stay a removal order. Usually a motion for a stay and a request that this motion be heard on an urgent basis will accompany the application for leave. For detailed information on the steps to take when a motion for a stay has been filed, see ENF 9, sections 5.25 to 5.28.

If a motion for a stay has been denied and the application for leave is proceeding, the removal will *not* be deferred pending the Court's decision on the leave application.

25.14 Subsequent PRRA applications

A person who receives a negative PRRA decision cannot apply for a subsequent PRRA as per paragraph 112(2)(c), if less than 12 months has passed since their last application for protection was rejected or determined to be abandoned or withdrawn, or in the case of a national from a country that is designated under subsection 109.1(1), less than 36 months has passed. For persons who remain in Canada following the aforementioned time periods, may make another application. The application and written submissions must be forwarded to the PRRA coordinator. If the subsequent application is submitted directly to the removal officer, it must be forwarded to the attention of the regional PRRA coordinator. Pursuant to R165, a subsequent application does not result in a stay of removal and removal arrangements can proceed. In limited cases, exceptional circumstances may warrant the deferral of removal pending a subsequent PRRA decision. In these cases, the officer conducting the removal should consult their supervisor or manager on whether the removal should be deferred. The decision to defer will be entirely at the discretion of the Removals Unit.

GCMS and NCMS should be updated regularly to capture all events throughout the PRRA.

26 Procedure: Notification to LOs and RCMP

The following two subsections provide details concerning notification prior to removal.

26.1 Notification to CBSA liaison officers (LOs) at visa offices abroad

Removal officers must notify liaison officers, as per the Mission Territory List, of all known removals arriving in or transiting their countries of responsibility. This includes escorted removals, airline liability cases, and non-escorted cases who confirm their departure.

The LOs must be given this information to advise other government officials and police of the returning individual as required. The visa office general mailbox should also be copied to ensure the notification is read if the LOs are away. As well, if a specific country does not have LO coverage at the time of the removal, please notify the IRCC immigration program manager of the Canadian Embassy or High Commission that serves that country.

For full information including country-specific instructions as well as the list of the office addresses, fax numbers, telephone numbers and territory responsibilities of LOs overseas, officers should consult the Notification of Removals Mission Territory List, and the LO Contact List at:

http://atlas/ob-dgo/divisions/io-oi/ins-sri/lo_contact_contact_al_eng.asp

It is imperative that officers send the notification to the post at least seven working days before the proposed removal. If the information cannot be sent within seven working days, officers must notify the LO as soon as possible to prevent difficult situations from developing and to ensure that any necessary assistance will be available.

Notification should stipulate whether it is being sent for information only, or if assistance is required in either the transit country or country of destination. The notification should contain the following information:

- names;
- dates of birth;
- passport numbers of escort officers, including police and/or medical officers;
- the full given name, family name and aliases of the foreign national being removed;
- the foreign national's date of birth, citizenship, place of birth and address in the home country;
- a description of the foreign national and a photograph;
- the type, serial number and validity period of the travel document; accompanying identification documents;
- the date of the removal order and the IRPA violation under which the removal order was issued;
- the proposed date of removal, itinerary and name of the transportation company;
- any criminal or terrorist background and whether the foreign national has a history of violence;
- the attitude of the foreign national concerning their removal (for example, whether the foreign national is likely to resist forcibly);
- if a medical case, the nature of the medical condition;
- any assistance from foreign authorities that is expected during transit;
- information on accompanying family members; and
- any other information that may be useful.

If a removal is delayed or cancelled, the officer must notify the visa office immediately. If necessary, further information should be sent regarding the specific reasons for the delay or cancellation and whether further action is required.

Furthermore, the Removals Unit must provide written instructions to port-of-entry officers of action to be taken if or when a client does not appear for a removal for which the visa offices were notified. For these cases, the BSF 582 (*Envelope: Removal Documents*), which is sent to the POE by the Removals Unit, must include the appropriate LO contact information (name, post, e-mail, fax and telephone numbers).

In the past, when a removal client did not appear, the notification to visa offices abroad had been actioned by the Removals Unit. Now, in the event that notification of removal was provided ahead of time, and the removal client does not subsequently appear as required, the POE officer must contact the necessary LOs as soon as possible, with a c.c. to the responsible Removals Unit. The method of notification is at the officer’s discretion, based on the timing and the circumstances of the case, e.g., e-mail, and/or telephone. This will allow the LO, and ultimately the CBSA, to maintain good relations with local authorities in both transit and destination countries.

For contentious and serious criminal cases, officers should send an information copy of the notification to the Manager of Inland Enforcement Operations and Case Management Division, and to the Manager of Enforcement and Intelligence Removal Operations at the NHQ.

26.2 Interpol notifications

Prior to removal, enforcement officers must notify the RCMP via INTERPOL, Ottawa,of the removal of an individual who:

- has a serious Canadian criminal record;
- has a serious foreign criminal record; and
- is wanted by a foreign country (active red notice or diffusion).

Enforcement officers should include the following information when notifying INTERPOL Ottawa:

- all first names, last names and assumed names of the person being removed;
- date and place of birth, citizenship and address in the country of origin;
- physical description of the person removed and photograph;
- type, serial number and valid period of travel documents;
- FPS number;
- identity documents attached to the travel documents;
- date of the removal order and the violation under which the removal order was issued;
- date of removal, the itinerary and the name of the carrier;
- criminal and terrorist background as well as any violence history of the foreigner, if applicable;
- nature of illness or condition, if medical attention is required;
- assistance (if required) by foreign authorities during the transit;
- information on accompanying family members, if applicable;
- names and dates of birth of the escorting officers, if applicable;
- passport numbers of the escorting officers, including police officers and medical staff, if applicable;
- other pertinent information.

RCMP INTERPOL Operations in Ottawa can be reached by telephone at (613) 825-6810, by facsimile at (613) 843-5034, or by email at ipottawa@rcmp-grc.gc.ca

27 Procedure: Criteria for a removal order to be enforced in Canada

A removal order should be enforced when the foreign national departs from Canada. This process is the final step in confirming a person's departure from Canada and recording that all of the departure requirements have been met.

Note: These requirements apply only to enforcing a removal order in Canada pursuant to R240(1) and do not apply to the enforcement of a removal order at a Canadian visa office outside Canada pursuant to R240(2). For information on enforcing a removal order outside Canada, refer to section 28.5.

In order for a removal order to become enforced on the person's departure from Canada, R240(1) specifies that a foreign national, regardless of voluntary compliance or removal by the Minister, must take the following steps:

- appear before an officer at the port of entry to confirm their departure from Canada [R240(1)(a)]. Note: The designated authority to verify, at a POE, the departure of foreign nationals who are effecting their removal order can be found in the Designation of Officers and Delegation of Authority documents in IL 3, item 200;
- obtain a Certificate of Departure (IMM 0056B) from the Department [R240(1)(b)];
- physically depart Canada [R240(1)(c)]; and
- have been authorized to enter their country of destination (other than for transit purposes) [R240(1)(d)].

Note: Under R242, persons who have been transferred under an order made pursuant to the Mutual Legal Assistance in Criminal Matters Act have not been authorized to enter their country of destination.

28 Procedure: Verifying departure

Whether officers are at a land border, airport or Canadian visa office outside Canada, they must issue a Certificate of Departure [IMM 0056B] to a foreign national when enforcing a removal order. When completing the IMM 0056B, officers must clearly indicate the type of removal order that was enforced at the time of departure verification, and have the foreign national sign and write the date beside the appropriate removal order. If the foreign national does not want to sign, the officer should indicate 'Refused to Sign' in the signature space on the IMM 0056B.

Before departure is verified, any outstanding warrants must be concluded, as appropriate. Officers should follow instructions in ENF 7 on executing and cancelling warrants. In all cases where a warrant is concluded, officers must contact the local office that issued the warrant.

28.1 Procedures to complete the Certificate of Departure [IMM 0056B]

When verifying the departure of a foreign national, the officer should review their identity or travel documents and ensure that the person departing Canada is the same person named on the removal order. Accompanying family members issued a removal order for being inadmissible under A42(b) do not require a separate Certificate of Departure and should be included on the same Certificate of Departure as the family member who was the originating cause for the issuance of the removal order.

After the criteria for enforcing a removal order have been met (for visa offices outside Canada, see section 28.5 below), the following fields in the Certificate of Departure (IMM 0056B) must be completed by the officer verifying departure:

- in part A, complete the required background information concerning the foreign national including details of their travel document;
- in part B, determine the type of removal order that is being enforced. The type of removal order will be straightforward when the person has been issued an exclusion or deportation order. However, in the case of departure orders, officers must accurately record whether it is a departure order or a departure order that has become a deportation order. For example, in the case of a foreign national who has been issued a departure order and does not depart Canada within the applicable 30-day period, the removal order must be enforced as a departure order that has become a deportation order;
- when a departure order is verified at a visa office outside Canada, regardless of whether it is within or beyond the 30-day applicable period, the departure order must be enforced as a deportation order pursuant to R224(2).
- in part B, record whether the case involves criminality (yes/no). For clarification, the officer should indicate "yes" if there has been any history of criminality recorded in a previous A44(1) report;
- in part B, complete all fields and have the person concerned sign and write the date beside the applicable removal order that is being enforced. For departure orders that have become deportation orders, the person must sign the confirmation of a deportation order;
- in part B, include any additional names of accompanying family members who are the subject of a removal order under A42(b). Certificates of departure must not be issued for accompanying family members. If a separate IMM 0056B is created for an accompanying family member, the "PDP" screen in GCMS will automatically be prompted and should be deleted. Accompanying family members under A42(b) are not considered PDPs and therefore do not require authorization to return to Canada;
- in part B, complete the originating office field to record the responsibility centre code that commenced the removal arrangements for the person. For clarification, removal arrangements are considered to be arrangements made at the time that the person is removal-ready (the removal order is enforceable and is not subject to any legal impediments). These arrangements will likely have been made from an office in Canada and will include the acquisition of travel documents, the pre-removal interview, the

itinerary, the booking of flights, notification of the Canadian visa office abroad and foreign consulate, and the preparation of the removal order information kit;
- in part C, complete the details of the person's departure from Canada. These fields include the port of exit/mission, country of destination, carrier, time, date of departure, the CIC involved, and the signature of the officer who confirmed the departure. Officers verifying departure outside Canada must accurately record their office code in the port of exit/mission box. This information is important for statistical and tracking purposes;
- if an officer acting as an escort from an inland CBSA office has verified the departure of a person with a removal order, enter the CBSA's responsibility code in the "CIC Involved" section of the IMM 0056B. Where an inland CBSA has not commenced any of the removal arrangements for the person but has assisted in the transport of a person to the airport or the border, or provided officers to the transit point or to the country of destination, the responsibility centre code for the inland CBSA office involved is recorded in this field. Officers at visa offices outside Canada should complete the "CIC Involved" box for the office in Canada that is the active holder of the removal file;
- the mandatory fields "Danger to the public" and "Unlikely to Appear" are consistent with the grounds for arrest under A55(2)(a) and must be completed in accordance with the guidance provided in ENF 20, section 5.6 and ENF 20, section 5.7. These fields play a key role in identifying which deportee records should be downloaded to the CPIC-PDP database. See section 42 below for an overview of the joint IRCC/RCMP initiative concerning previously deported persons.

Note: CBSA offices/responsibility codes are to be placed in fields on the IMM 0056B where applicable.

Many important decisions concerning removal functions will be made on the basis of the data retrieved from the "Certificate of Departure" screen in GCMS/NCMS. Immediately following departure verification, officers should complete the "Certificate of Departure" screen in GCMS/NCMS and ensure that they take the following steps:

- input information into all mandatory fields of the IMM 0056B in GCMS;
- indicate the type of removal order at the time of departure verification;
- input any additional information into the "Notes" screen in GCMS (i.e., airline, flight number, action on bond, counselling, comments, etc.);
- in the case of an overseas escorted removal, enter the details of the departure verification into GCMS/NCMS within 48 hours of the removal officer's return to Canada; and
- distribute the copies of the Certificate of Departure accordingly, and as follows:
    - copy 1 to the person concerned;
    - copy 2 to the originating CBSA or IRCC office that issued the removal order;
    - copy 3 to the Query Response Centre (QRC) at National Headquarters; and

For procedures on enforcing a removal order at a visa office outside Canada and the distribution of documents, refer to section 28.5.

Following the completion of the "Certificate of Departure" screen in GCMS, the "Previously Deported Persons (PDP)" screen will be prompted and must be completed accordingly. The purpose of this screen is to flag in GCMS and CPIC that the person has been deported from Canada and requires authorization to return to Canada pursuant to A52(1). The "PDP" screen will appear (except in A42(b) cases) if the type of removal order was either

- a deportation order or
- a departure order which becomes a deportation order.

Note: In the case of a departure verified at a Canadian visa office outside Canada, officers in Canada will receive the manually completed IMM 0056B from the officer at that visa office. In

such cases, it is the responsibility of the officer at the CBSA office in Canada who is the holder of the file to input the person's Certificate of Departure into GCMS/NCMS. This is an important step in ensuring that the systems reflect that the removal order has been enforced. For more information, see section 28.5, below.

28.2 Verifying departure at airports

An IMM 0056B should be given to the foreign national only after the foreign national signs the Certificate of Departure just prior to boarding the aircraft. The officer should witness the departure of the aircraft from the airport departure gate in order to confirm that the foreign national has actually departed from Canada. GCMS/NCMS should be updated immediately. If the foreign national refuses to sign, the officer should note 'Refused to Sign' in the signature space.

28.3 Verifying departure to the U.S. from airports with pre-clearance facilities

If a foreign national is departing Canada for the United States from an airport with pre-clearance facilities, it is preferable that an officer issue an IMM 0056B, after U.S. officials have pre-screened and accepted the foreign national. This process may not always be possible because of the physical layout of some POEs, but the Agency strongly recommends this approach where facilities permit.

A Certificate of Departure [IMM 0056B] should be given to the foreign national only after the foreign national signs the Certificate of Departure just prior to boarding the aircraft. The officer should witness the departure of the aircraft from the airport departure gate to confirm that the foreign national has actually departed from Canada. GCMS/NCMS should be updated immediately.

28.4 Verifying departure at land borders

Officers at a land border POE should issue a Certificate of Departure at the POE where the foreign national physically departs Canada for the United States.

- In the case of foreign nationals who are either U.S. citizens or U.S. resident aliens, an IMM 0056B can be completed and signed by an officer at a port of entry or
- In the case of foreign nationals without U.S. status, an officer should obtain the address of the destination and/or a fax number where the IMM 0056B can be sent. Mailing or faxing the IMM 0056B will act as a safeguard to ensure the foreign national receives the Certificate of Departure *after* being lawfully admitted into the U.S.

Officers should counsel the foreign national to proceed to the U.S. port of entry to seek entry.

28.5 Verifying departure by an officer outside Canada

Officers outside Canada may encounter foreign nationals who are subjects of unenforced removal orders and who are applying to return to Canada. Pursuant to R25, an officer shall not issue a visa to a foreign national who is the subject of an unenforced removal order.

In limited circumstances, R240(2) authorizes officers outside Canada to enforce an unenforced removal order. To enforce a removal order outside Canada, officers must have the designated authority under IL 3, Module 9, item 203 of the International Region Instruments of Designation/Delegation.

The intention of R240(2) is to encourage persons under a removal order to voluntarily comply with their removal order by entering a country where they can obtain legal status. This provision

is not to intended to facilitate the confirmation of unenforced removal orders of foreign nationals who are illegally in a country where they are making an application. Rather, this provision addresses the oversight by certain foreign nationals to verify their removal orders at a port of entry at the time of their departure, and allows for enforcement of the removal order outside Canada, should a foreign national seek to return to Canada.

Officers should keep in mind that the CBSA's overriding priority is to maintain control of the removal process. The CBSA aims to ensure that persons who are subject to removal orders verify their departure at a POE when they depart from Canada. The enforcement of removal orders outside Canada is not to be encouraged, but applied in limited circumstances where a foreign national is applying for a visa or authorization to return to Canada [IMM 1203B] and satisfies a designated officer that all of the criteria under R240(2)(a) to (c) have been met.

Criteria for the enforcement of a removal order outside Canada

In order for an officer to enforce an unenforced removal order of a foreign national outside Canada, R240(2) establishes that the foreign national must make an application to an officer for one of the following documents:

- a permanent resident visa;
- a temporary resident visa; or
- an authorization to return to Canada under A52(1).

Before a visa or an authorization to return to Canada can be issued, the officer conducting the examination must first determine whether the person has been previously issued a removal order and whether the removal order has been enforced. If the foreign national is the subject of an unenforced removal order, the officer shall enforce the removal order under R240(2) only after the foreign national has demonstrated that they have met *all* of the following mandatory requirements:

- the person is the same person described in the removal order [R240(2)(a)]; and
- the person has been lawfully admitted to the country in which they are physically present *at the time the application is made* [R240(2)(b)]; and
- the person is not inadmissible on grounds of security under A34, human or international rights violations under A35, serious criminality under A36(1), or organized criminality under A37 [R240(2)©].

The onus of proving that the above verification criteria have been met rests with the foreign national who is making the application to return to Canada, and not with the officer conducting the examination. If the foreign national cannot satisfy the officer who is assessing the application that each of the three requirements under R240(2) has been met, the removal order must remain unenforced and any application must be refused. See section 28.7 below for the instructions to be followed after an officer has made a negative decision to enforce a removal order outside Canada.

Clarification of R240(2)(b)

The foreign national must provide documentary proof to the officer conducting the examination, in order to satisfy the officer that the foreign national has been lawfully admitted to the country in which they are present at the time they make an application for a visa or an Authorization to Return to Canada. The following examples should assist officers in determining whether R240(2)(b) has been satisfied.

Example 1: A foreign national is lawfully admitted to a country and maintains lawful status in that country on or before the date they make an application for a visa or an Authorization to Return to Canada.

Example 2: A foreign national is lawfully admitted to a country but does not maintain their lawful status in that country. Subsequently, the foreign national regains lawful admission on or before the date they make an application for a visa or an Authorization to Return to Canada.

Example 3: A foreign national is not lawfully admitted to a country but subsequently becomes lawfully admitted to that country on or before the date they make an application for a visa or an Authorization to Return to Canada.

Note: The term "lawfully admitted" is applicable to all countries, meaning that the person has been granted lawful immigration status in a particular country.

Depending on the particular country where the application is being made, sufficient proof of lawful admission and the retention of lawful status may include passport entry stamps, resident documents, citizenship records, etc. Officers should carefully examine any expiration dates on the foreign national's documents to ensure the person has lawful status in the country that they are physically in at the time the application is made. For information on determining lawful admission to a country, refer to OP 1, section 5.16.

Based on the foreign national's compliance with the requirements of R240(2), the officer must either enforce the removal order or make a decision not to enforce the order. For further information, see section 28.6 and section 28.7 below.

28.6 Positive decision to enforce a removal order outside Canada

After the foreign national has satisfied an officer that they have met the requirements for verifying departure outside Canada as outlined in section 28.5, the officer conducting the examination or a designated officer in the same office must enforce the removal order and issue a Certificate of Departure.

The Certificate of Departure, [IMM 0056B], is a serialized, multi-copy document that serves as proof that a removal order has been enforced. This form is available in hard copy at visa offices outside Canada. For detailed instructions on completing the Certificate of Departure, see section 28.1.

Once the Certificate of Departure has been completed, copies should be distributed as follows:

- copy 1 to the person concerned;
- copy 2 to the CBSA or IRCC office in Canada that issued the removal order;
- copy 3 to Data Quality at National Headquarters. This copy should be sent by mail to:

  Record Services – Microfilm Unit
  300 Slater Slater Street, 2nd Floor
  Jean Edmonds Tower – North
  Ottawa, Ontario
  K1A 1L1

- copy 4 is to be retained in the visa office file.

Copy 2 of the IMM 0056B should be accompanied by a memo instructing the in-Canada officer to input the IMM 0056B information into GCMS/NCMS. Upon receipt, the officer in Canada must input the IMM 0056B and other case details into GCMS/NCMS to ensure that the systems reflect the fact that the removal order has been enforced.

It is important to note that pursuant to R224(2), all departure orders that are not enforced at a POE upon departure of the foreign national from Canada *must be enforced as deportation orders*, even if the 30-day period for enforcement at a POE has not yet passed.

If the removal order is a deportation order, exclusion order (within the excluded period), or a departure order that has become a deportation order through operation of law, the applicant

should always obtain the Authorization to Return to Canada under A52(1) prior to the visa issuance. This is to avoid the contradictory situation of a person appearing at a POE with a visa but without an Authorization to Return to Canada issued by an officer pursuant to A52(1).

After an Authorization to Return to Canada is granted, officers outside Canada must ensure that any outstanding warrants are cancelled by contacting the CBSA office that issued the warrant.

28.7 Negative decision to enforce a removal order outside Canada

If a foreign national who has made an application does not satisfy the examining officer outside Canada that all of the verification requirements under R240(2) have been met, the foreign national's removal order will remain unenforced. In such circumstances, any application for a visa must be refused [R25]. A foreign national who is the subject of an unenforced removal order is not entitled to obtain a visa or an Authorization to Return to Canada.

The officer should advise such persons that they are ineligible for a visa due to the outstanding unenforced removal order against them, and that if they attempt to re-enter Canada, they will be subject to arrest.

After an officer makes a negative decision to enforce a removal order outside Canada and refuses the application, the only available alternatives are as follows:

- the foreign national acquires lawful status in the same country where they made an application and submits a new application; or
- the foreign national becomes lawfully admitted to another country and makes an application for a visa or Authorization to Return to Canada in that country.

28.8 Person departs Canada without obtaining a Certificate of Departure

A foreign national who leaves Canada and does not comply with the departure requirements of R238 cannot be said to have enforced their removal order. In these cases, the order remains unenforced.

In the case of a departure order where a foreign national does not meet the requirements under R240(1)(a), R240(1)(b) and R240(1)(c) within the prescribed period of time, the order becomes a deportation order by operation of law under [R224(2)].

If a foreign national subject to a departure order departs from Canada without complying with the requirements under R240(1)(a), R240(1)(b) and R240(1)(c) and reappears before an officer at a POE within the applicable period, the officer should enforce the removal order as a departure order. In these cases, the person is appearing before an officer at a port of entry to verify their departure and must comply with all the requirements sent out in R240(1)(a), R240(1)(b) and R240(1)(c). In limited circumstances where the person is applying for a visa or an Authorization to Return to Canada and the person complies with all the requirements set out in R240(2), the removal order must be enforced outside of Canada. For further information on the enforcement of a removal order outside Canada, refer to section 28.5 above.

29 Procedure: Verifying departure in the case of a removal order not in force

In some instances, officers may encounter a foreign national who has been issued a removal order and who requests to voluntarily depart Canada before the removal order comes into force under A49(1) or A49(2). Examples of these cases could include the following:

- a permanent resident or a foreign national is issued a removal order with a right of appeal and requests to depart Canada before their appeal period expires [A49(1)(b)];

- a permanent resident or a foreign national is issued a removal order; they have made an appeal and request to depart Canada before the final determination of the appeal is made [A49(1)(c)];
- a refugee protection claimant whose claim has been determined ineligible and requests to depart Canada before the expiry of the seven-day period [A49(2)(b)];
- a refugee protection claimant whose claim is rejected by the Refugee Protection Division (RPD) and requests to depart Canada before the expiry of the 15-day period [A49(2)(c)];
- a refugee protection claimant whose claim is declared withdrawn or abandoned by the RPD and who requests to depart Canada before the expiry of the 15-day period [A49(2)(d)]; and
- a refugee protection claimant whose claim is terminated because of misrepresentation or multiple claims and who requests to depart Canada before the expiry of the 15-day period [A49(2)(e)].

Note: The Department is not under any obligation to assess risk to persons who wish to leave voluntarily and whose removal order is not in force. Therefore, IRCC does not provide notification of a pre-removal risk assessment (PRRA) to these persons.

29.1 Port of entry procedures

If persons subject to a removal order that is "not in force" have presented themselves to an officer at a POE and indicated a desire to leave Canada, the POE officer can allow them to depart from Canada. A Certificate of Departure should be initiated but not completed until the removal order has come into force under A49(1) or A49(2). IRPA only allows an officer to "enforce" a removal order that has come into force and is enforceable (there is no stay of removal). When faced with this scenario, the POE officer should follow the procedures set out below before the persons depart the POE:

- The officer must ensure that the person concerned is aware of the fact that the removal order is not yet in force and of the legal implications. The officer should obtain a statutory declaration indicating that the person was advised of these details.
- The officer should obtain an address for service of the IMM 0056B, which will be sent to the person concerned after the expiration of the seven-day or fifteen-day period under A49. If a statutory declaration is obtained, the address for service should be noted in the declaration.
- The officer should ensure that a detailed note is entered in GCMS explaining the case circumstances. The GCMS notes should reflect that the person wanted to depart Canada voluntarily, their reasons for departing, whether a statutory declaration was obtained, whether the statutory declaration was translated, and where and when the IMM 0056B should be sent.
- The officer should follow up the case and mail the IMM 0056B to the address provided by the person after the removal order has come into force under A49(1) or A49(2).

Completion of the Certificate of Departure

The procedures to complete a Certificate of Departure (IMM 0056B) for removal orders not in force are different from the regular procedures for confirming departure set out in section 28. Officers are reminded that they cannot enforce the removal order until it comes into force and is enforceable. The enforcement of the removal order occurs only after the Certificate of Departure has been signed by an officer on the date of confirmation. When verifying departure of persons with removal orders not in force, POE officers must take the following steps *at the time of the person's departure*:

- complete boxes in parts A and B as provided for in section 28.1;

- have the person sign beside the applicable removal order that is to be enforced. For example, if a refugee claimant was issued a departure order and has subsequently withdrawn their refugee claim, the applicable removal order will be a departure order;
- leave the "Date of Confirmation" field blank;
- ensure that any accompanying family members under A42(b) are recorded; and
- complete the following fields in part C: port of exit; final destination; carrier; time and date of departure; and CIC involved.

Officers should calculate and note the date the removal order will come into force and bring forward the IMM 0056B for final completion. *At the time the removal order becomes in force*, officers must complete the following fields in the IMM 0056B to enforce the removal order:

- record the date of confirmation in part B. This date will be determined by calculating the period from which the removal order will come into force under A49(2).

Example: If a refugee claimant withdraws their claim on March 1, 2014, the removal order will come into force 15 days later [A49(2)(d)]. In this case, the date of confirmation will be March 16, 2014. For further information on establishing the date when a removal order comes into force, refer to ENF 10, section 8.3.

- sign in the box designated for "Signature of Officer" in part C; and
- ensure the form is accurately completed.

After the IMM 0056B is completed, it should be entered into GCMS/NCMS and mailed to the address provided by the foreign national. If the case was referred from an inland office, the POE officer should forward a copy of the IMM 0056B to the appropriate inland office for its file.

29.2 Inland procedures

When a person appears at an inland CBSA or IRCC office requesting to voluntarily depart from Canada before the removal order comes into force, as in the case of a refugee claimant who has withdrawn their claim to the RPD or RAD, the inland officer should advise the person that their removal order has not yet come into force and that they should appear before an officer at the POE. On the arrival of the person at the POE, the POE officer should proceed according to the departure guidelines set out in section 28.1 and obtain the required information on the person's departure from Canada. In cases where the passport is on file at the inland office, arrangements will need to be made between POE and inland office to transfer the document prior to removal.

30 Procedure: Calculation of the applicable period for departure orders

Under R224(2), a foreign national who is issued a departure order must meet the requirements set out in R240(1)(a), R240(1)(b) and R240(1)(c) within 30 days after the order becomes enforceable (see section 10.1 above). Failure to comply with the departure requirements within 30 days will automatically result in the departure order becoming a deportation order, and the removal order cannot be enforced as a departure order. This will affect the person's requirements to return to Canada. If the removal order is enforced as a departure order that has become a deportation order, the foreign national will require the Authorization to Return to Canada by an officer [A52(1)].

For persons issued departure orders who remain in Canada under an unenforced removal order, officers must, when verifying departure, consider and calculate the 30-day applicable period. In calculating the applicable period for departure orders, officers must determine if there are any statutory or regulatory stays of removal or whether the person is detained under IRPA during the

30-day applicable period. Either of these circumstances will have the effect of "stopping the clock" and suspending the 30-day period.

To ensure that the applicable 30-day period is applied consistently, officers must become familiar with the calculation periods and be aware that the applicable period is suspended when:

- the removal order against the person is stayed; or
- the person is detained under IRPA.

Under R224(3), the 30-day applicable period is *suspended* until the foreign national's release or when the stay is lifted. The applicable period *resumes* the day following the release or the removal of the stay. The number of days during the applicable period before the detention or stay is then subtracted from the time remaining in the original 30-day applicable period.

For further information, refer to section 30.1 and section 30.2 below.

30.1 Stay of removal on a departure order

If a foreign national is the subject of a departure order that is stayed, the officer must consider whether the person is on a valid statutory or regulatory stay or whether the stay has been lifted. If the stay has been lifted, the officer must calculate the 30-day applicable period during the time there was no stay of removal in effect. If this calculation shows that the person's time in Canada exceeds 30 days, the order becomes a deportation order. If the time period is within the 30-day applicable period, the order remains a departure order.

Example: Stay of departure order: A departure order becomes enforceable on January 2, 2015. The departure order is stayed on January 8, 2015. The stay is lifted on March 21, 2015. From January 2, 2015 to January 8, 2015, there are six days that are counted against the departure order. From January 8 to March 21, 2015, there are 72 days where the removal was stayed. This period is not calculated as part of the 30-day applicable period. The clock resumes on March 22, 2015, and the foreign national has 24 days remaining from this date to depart Canada and enforce their departure order. The departure order must be enforced by April 14, 2015, in order to avoid a deportation order against the foreign national.

When departure is verified, it is important for officers to accurately indicate on the IMM 0056B and in GCMS/NCMS whether the removal order is a departure or deportation order.

30.2 Detained in Canada on a departure order

In cases where a foreign national is the subject of a departure order and has been detained in Canada under IRPA, the 30-day applicable period is suspended until the foreign national's release from detention [R224(3)]. Once the foreign national is released, the remaining time, if any, resumes the day following the person's release.

It is very important that the GCMS/NCMS systems are updated when a person is detained or released under the IRPA.

Example: Detained on a departure order within the 30-day applicable period: A departure order becomes enforceable on August 6, 2013. The foreign national is detained under IRPA on August 23, 2013. The foreign national is then released from detention on September 2, 2013. From August 6, 2013 to August 23, 2013, there are 17 days that are counted against the departure order. The clock resumes on September 3, 2013, and the foreign national has 13 days remaining to depart Canada and enforce the departure order. The detention period is not calculated as part of the 30-day applicable period. The foreign national should yield to the departure order by September 15, 2013, in order to avoid a deportation order.

Example: Detained on a departure order within the 30-day applicable period: A departure order becomes enforceable on July 1, 2013. The foreign national is detained under IRPA on July 10,

2013. The foreign national is released from detention on August 31, 2013. Even though the foreign national was detained for a period of more than 30 days, the person is not considered to be under a deportation order. From July 1, 2013 to July 10, 2013, there are nine days that are counted against the departure order. The clock resumes on September 1, 2013, which is day 10 of the applicable period. The foreign national has 20 days to depart from Canada before the departure order becomes a deportation order.

When departure is verified, it is important for officers to accurately indicate on the IMM 0056B and in GCMS/NCMS whether the removal order is a departure order or a departure order that becomes a deportation order.

31 Procedure: Subsistence for persons under a removal order

In exceptional circumstances, the CBSA manager or supervisor has the discretion to arrange for the foreign national's subsistence or the means to buy it. Foreign nationals being removed to the United States and who are travelling without escort(s) from the Canadian border to distant points in the United States, should be given cash only.

If it appears necessary to provide financial assistance for transportation to foreign nationals, officers should advise their manager or supervisor.

32 Procedure: Medical cases for removal

This section contains information on medical cases for removal and requesting medical information for the destination countries of persons under a removal order.

32.1 Medical Requirements necessary for Removal (MRR)

All MRR requests must be forwarded to CBSA-ASFC_Ops_ROCR.UECOR@cbsa-asfc.gc.ca for action, accompanied by all relevant information, documentation and consent forms. Removal Operations will forward the requests on to the CBSA Medical Contractor. The CBSA Medical Contractor will provide an assessment within 48 hours of the request. Removal Operations will send the assessment to the requesting officer within 24 hours (excluding weekends) of receipt. Should a backlog of requests occur, MRRs will be issued based on removal date.

Presently, all MRR requests can be forwarded to CBSA Removal Operations in an email format.

32.2 Requesting information from IRCC Migration Health Branch (MHB)

Destination country information

Unlike the MRR assessments that may result in a short term deferral of removal, foreign nationals who allege that removal may cause death or irreparable harm due to a lack of critical medical care in the country of removal are, in fact, requesting to stay in Canada indefinitely.

IRCC MHB provides updates of medical services available for the destination country of interest to Removal Operations. CBSA officers who require this information in response to a client's claim that the required services are not available should contact CBSA-ASFC_Ops_ROCR.UECOR@cbsa-asfc.gc.ca. Clearly indicate in your email that your request is in relation to a removal order, the country of destination, and the medical condition of concern.

When foreign nationals claim a possible risk upon return due to inadequate medical care and the enforcement officer has determined that sufficient evidence exists, foreign nationals should be directed to apply for H&C considerations and return to the CBSA removal office within 30 days with proof that such application was submitted in order to have their unexamined risk assessed prior to removal.

In the interim, should a deferral request include both MRR and inadequate medical care in the destination country factors, please direct the foreign national to submit an H&C application first. The MRR will only be requested if IRCC renders a negative decision on the H&C application.

33 Procedure: Fingerprinting at time of removal

When a person is under a deportation order, or a departure order that has become a deportation order, the officer conducting the pre-removal interview will capture their fingerprints and photograph, even in cases where the fingerprints and photograph are already on file. This process may be completed up to 90 days prior to removal. Officers are to use LiveScan automated fingerprint systems wherever they are available, with ink and roll prints only being used when a LiveScan machine is not available.

Officers will be utilizing the CAR-Y workflow and when completing the "Demographic Entry - Statute of the Charge" section, the officer will select the IRPA authority from the dropdown menu. The officer will then select "Other" in the "Section Number and Wording" section and then enter "Removal – Deportation Order" in the "Charge Description 1".

When fingerprints are captured and ready to be submitted, the officer will print 3 copies of the C-216. One copy will be inserted into the person's file, another will form part of the Previously Deported Person package that is sent to the Warrant Response Centre, and the third form will ultimately be forwarded to the RCMP. The RCMP requires the CBSA to enter the date when the removal from Canada occurred and the destination country.

When preparing the PDP package, the officer will include the information below in the Disposition section of all three C-216 forms.

Removal Order Authority – Section 48 of IRPA CBSA

Removed on: ddmmmyyyy

Destination Country:

When forwarding the PDP package to the Warrant Response Centre, the officer will also insert the C-216 copy for the RCMP. The Warrant Response Centre will be responsible for ensuring data quality, batching the C-216 for the RCMP and forwarding them to the RCMP for insertion in the Real Time Identification System.

34 Procedure: Persons refused entry to their country of destination after a Certificate of Departure has been issued

When a foreign national has been issued a Certificate of Departure [IMM 0056B] and is subsequently refused admission to another country, they remain the subject of an unenforced removal order (see definition of "Unenforced removal order" in section 6 above). When refusal occurs and the person appears back at the port of entry, officers should take the following steps:

- examine the person [A18(1)];
- cancel the "PDP" screen in GCMS (make sure appropriate Notes are added);
- delete the IMM 0056B if it has not been microfilmed or, if it has received a microfilm number, send an e-mail to GCMS Data Quality Control at National Headquarters with instructions to delete the IMM 0056B from GCMS.
- Add note to GCMS that the removal order has not been enforced. Also include any circumstances surrounding the person's refusal into another country and include

instructions to the Warrant Response Centre (WRC) to delete the PDP information from CPIC;

Note: The WRC will receive daily reports on the cancellation of "PDP" screens. Based on instructions in GCMS notes, the WRC will delete the PDP information from CPIC.

- in the case of a departure order, advise the person of the time remaining before the departure order becomes a deportation order. The departure order remains enforceable and can be enforced like any other removal order. Under R224(2), if a departure order is not enforced within 30 days, the foreign national has not complied with the departure requirements under R240(1) and the departure order becomes a deportation order;
- advise the foreign national that after being refused entry to yet another country, they will be allowed back into Canada, but the removal order against them remains unenforced. (for the options available to officers after a foreign national has been refused entry to another country, refer to section 34.1 below); and
- later, when the person departs Canada, the officer should complete and issue a new Certificate of Departure.

34.1 Options available after being refused entry to another country

When a foreign national has been previously issued a Certificate of Departure and has been refused entry to another country, the officer at the POE must conduct an interview to determine the method of enforcing the removal order. Although this assessment was previously conducted before the foreign national departed Canada, they are subject to a new determination of how their removal order should be enforced since the circumstances surrounding their removal may have changed. In addition, officers should keep in mind that the removal order is unenforced and the foreign national must comply with the criteria for a removal order to become enforced. The following options are available to officers after a person has been refused entry to another country and is being examined under the authority of A18(1).

1. Allow the person to proceed into Canada

Officers should interview the person to determine the person's ability and intent to depart Canada, and, in the case of a departure order, the likelihood of the person's leaving Canada within the 30-day applicable period (if any). When an officer believes that the person will continue to make every effort to leave Canada as soon as possible or within the time remaining in their 30-day applicable period, they should allow the person to enter Canada under R27(3). Before the foreign national is allowed to proceed into Canada, the officer should take the following steps:

- obtain information that would be useful to investigators, such as the person's Canadian address and the addresses of relatives and friends in Canada;
- remind the foreign national of the importance of leaving Canada and that they remain the subject of an enforceable removal order (if there are no stays of removal);
- counsel the person that, under A55, they may be arrested for removal if they fail to depart Canada, in the case of a departure order, after the 30-day applicable period or, in all other cases, as soon as possible;
- counsel the person that they will have to appear before an officer at a POE to verify their departure from Canada; and
- amend GCMS/NCMS to reflect the action taken, specifically that the person has returned to Canada, and provide other information concerning the person's travel plans.

2. Impose conditions and/or the payment of a deposit or the posting of a guarantee for compliance

Under A44(3), an officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, on persons subject to a removal order. The purpose of the conditions and/or the deposit or guarantee for compliance is to encourage compliance with IRPA after the officer is satisfied that the person will leave Canada. Refer to ENF 8, for further information on taking a deposit, and to ENF 8, for taking a guarantee for compliance. After an officer issues a deposit or guarantee for compliance, the officer should follow the procedures outlined in Option 1 above. It is important that all deposit or guarantee information, including any conditions imposed, are input into GCMS/NCMS.

3. Arrest and detention for removal

Where an officer has reasonable grounds to believe that the foreign national who is the subject of a removal order is a danger to the public or is unlikely to depart Canada and present themselves before an officer to verify their departure from Canada, the officer may arrest and detain the person for removal [A55(2)]. After a foreign national has been arrested and detained, this information should be input into GCMS/NCMS. For procedures on making an arrest, see ENF 7.

35 Procedure: Removal to the United States

The following subsections contain detailed information about removals to the United States following the termination of the Reciprocal Arrangement on October 30, 2009.

35.1 Persons who can be removed to the U.S.

The following classes of foreign nationals may be returned to the U.S:

- a foreign national who is a citizen of the U.S.
- a foreign national who is a national of the U.S.

A national of the U.S. is a person who is not a citizen of that country, but who owes permanent allegiance to it. Similar to Canadian Immigration laws, U.S. Citizens have the legal right to return to their country whereas permanent residents have the right of abode that only a U.S. Immigration Judge will determine if it is in question. The receiving U.S. POE will accept verbal notice of the deportee's return to the U.S. if they are properly documented.

35.2 Documents required when removing to the U.S.

U.S. officials require that all individuals entering their country be properly documented.

In line with the documentary requirements under the Western Hemisphere Travel Initiative (WHTI), which are the primary recognized documents to assert an individual U.S. citizenship, other satisfactory confirmation of U.S. status can be presented.

During the course of their investigation, officers will continue to perform database checks and gather all the necessary evidence providing status to the individual in the U.S and be prepared to provide identity documents; such as passports, emergency travel documents, birth certificates, certificate of naturalization etc. The documentation will support and provide evidence to U.S. officials during the removal.

35.3 Advance notice of deportees of interest to U.S. law enforcement authorities

If, well before the actual removal, officers are aware that a deportee is or may be of interest to law enforcement authorities in the U.S., officers should provide the appropriate law enforcement agency with advance notice of the relevant facts and circumstances of the case and the person's travel arrangements.

35.4 Persons issued a direction to leave or a direction to return to the U.S. after applying for entry at a Canadian POE

In these cases, the foreign national will have:

- a copy of the *Direction to Leave Canada* [BSF 503] because an officer is unable to examine the person under R40(1); or
- a copy of the *Direction to Return to the U.S.* [BSF 505] under R41 because an officer is not available to complete an examination, the PS Minister is not available to review an A44(2) report, or an admissibility hearing cannot be held.

36 Procedure: Removal to the United States for variable cases

This section contains detailed information about removal to the United States for variable cases.

36.1 Notice to the U.S. in cases involving medical care or treatment

The officer must provide advance written notice of the return of any removal case to the U.S. if the officer has evidence to suggest that medical attention is required because of a mental or physical condition. The written notice of the return of the person being removed must include:

- a written opinion of a competent authority (such as a medical doctor or an official of a medical institution) confirming the need for care or treatment;
- a description of the facts and circumstances of the case; and
- the deportee's travel arrangements. The officer must supply this information as soon as possible if they are not able to do so when giving notice.

36.2 Official records and privacy consideration

Under the *Privacy Act* the officer may provide information from the CBSA's files to U.S. authorities:

- to establish that a deportee is returnable;
- to ensure that appropriate arrangements for reception are made for deportees requiring medical care;
- to find out whether the deportee is wanted by U.S. law-enforcement authorities; and to assist port-of-entry procedures if safety and security factors may be indicated.

The USDHS may provide information from its files to Canadian government offices for these purposes. In cases involving criminality (such as deportees wanted by Canadian police authorities), U.S. authorities will communicate directly with the RCMP.

Officers may furnish U.S. authorities with fingerprints and photographs obtained under A16 only when identity is in doubt.

36.3 Notification of persons being removed for criminal or drug offences

Officers notify the missions abroad of persons being removed from Canada to any country for criminal or drug convictions. In U.S. cases, officers should also notify the U.S. immigration attaché in Ottawa and the receiving USDHS authorities.

Officers should ensure that the U.S. immigration attaché is notified of all persons being removed to the U.S. for all criminal or drug offences, and the reason they have been found to be in contravention of A34, A35, A36(1), A36(2) and A37.

36.4 Request for confirmation of vital statistics in the U.S.

An officer must make all requests in the most expedient manner, such as priority post, facsimile, e-mail and so forth.

For New York City, the request must be in the following form:

> I have been authorized by (*name)* to obtain confirmation of the birth of (*name)* on (*date)* at New York City in (*borough)*, son of (*father's name)* and (*mother's name)*. Please confirm birth particulars as soon as possible, by courier, facsimile, telegram or whatever is local office procedure.
>
> Officers should send the request to:
>
> Director of Vital Records,
>
> NY City Department of Health,
>
> 125 Worth Street, Room 133,
>
> New York City, N.Y. 10031.

For foreign nationals under a removal order who were born in Georgia, officers should make the request, including all relevant information, through the Immigration Section of the Canadian Consulate General in New York City. The consulate will inform the officer of the findings of the search made by the Georgia Department of Human Resources. If the officer needs a birth certificate, the same procedure should be followed; the consulate will obtain the document and send it to the officer. The consulate will cover all costs.

Some states have specific requirements for confirmation of birth particulars, and several charge fees.

For the following states, officers should make the requests through the responsible Canadian consulate:

- Connecticut: requires a written government request and the written consent of the individual concerned;
- Iowa: send requests through the Buffalo office;
- Nebraska: fee, billed to the Buffalo office;
- New Hampshire: fee;
- Oklahoma: requires a letter of authority from the foreign national concerned and particulars of the foreign national's parents, including the mother's maiden name; fee;
- Texas: keeps statistics by county and requires the consent of the foreign national concerned for every county except Dallas; fee;
- Wisconsin: fee, billed to the Buffalo office.

If the officer encounters problems in verifying births in a particular state, they should contact the immigration section of the responsible Canadian consulate, which will then contact the vital statistics department with the request, guarantee payment of any fee, and return the information to the officer.

When the officer sends a request through a consulate, the officer must provide the office's financial code so that the consulate can recover any expenses incurred.

If a state refuses to release birth information because the foreign national concerned will not consent to its release, and all other methods have failed, the officer may have to contact the U.S. immigration attaché.

If the officer has asked the U.S. immigration attaché or USDHS to confirm or secure vital statistics for foreign nationals under a removal order, and the officer has then been able to get the information from another source, they must inform the attaché or USDHS immediately.

36.5 Removal via the U.S. to other countries

Escorted persons: Officers require the consent of the U.S. Immigration Attaché in Ottawa to remove a person under escort via the U.S. to a third country. On arrival at the U.S. POE, the escort officer must:

- obtain a US 1-94 form from the U.S. examining officer;
- have the form signed by the master of the vehicle by which the person's departure from the U.S. is effected;
- return the signed form to the U.S. port of issue; and sign the *Certificate of Departure* [IMM 0056B] after the departure has been verified.

Unless the officer makes other arrangements with the USDHS, it is the CBSA's responsibility to arrange for an escort for the removal via the U.S. of a foreign national deported after admission to Canada, if the foreign national must disembark in the U.S. en route to a third country. This provision applies even if the airline does not require the foreign national under a removal order to be escorted.

Removal by air: If officers remove a person from Canada on an aircraft that merely calls for servicing at a U.S. airport and then continues to its destination in a third country, officers do not need to provide an escort through the U.S. Officers must give advance notice to the USDHS office where the aircraft lands regarding the expected date and time of arrival and departure, so that the person does not disembark and the USDHS can verify departure. Depending on local office procedures, officers may also inform the U.S. Immigration Attaché.

Removal on ships calling at U.S. ports: An escort is not necessary when officers are removing a person from Canada to a third country on a ship that may call at a U.S. port before proceeding abroad. If officers know the port of call, officers must inform the USDHS officer in charge or the USDHS regional director. The ship's master is responsible for safeguarding the person and informing the USDHS officer in charge that the person is on board.
The officer is still required to escort the person under a removal order who is brought into either country in transit for embarkation on a ship.

36.6 Managing the envelope containing removal documents

When the officer is turning the foreign national over to the USDHS, the officer should give the *Envelope: Removal Documents* [BSF 582] and contents to the immigration officer at the U.S. POE.

PART IV – ESCORTED REMOVALS

37 Procedure: Administrative travel guidelines for officers performing escorts

The Treasury Board of Canada travel directive is an important document for Government of Canada employees who travel on government business or arrange for those who travel. Management and officers can locate the travel directives at the following Web site: http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_113/td-dv_e.asp

38 Procedure: Defining and measuring risk

In cases where the PS Minister must enforce the removal order, a decision may be required whether or not the individual being removed requires an escort. The final decision of the need to escort and the accountability for the decision following the assessment of the need for escorts rests with either the supervisor, manager or in some cases, the director.

In the context of escorted removals, risk is measured by the uncertainty that the person under removal may, during the removal, endanger the safety and security of the person(s) being removed, the travelling public, transportation company personnel and/or the officer(s) conducting the removal. As a minimum, some form of quantitative or qualitative analysis is required for making decisions concerning threats to officers, airline personnel and the travelling public; risk that the client will self-harm; or the risk of resistance that will result in the failure of the removal.

For each element of risk, two calculations are required: its likelihood or probability (the chance of the risk happening); and the extent of the impact or consequences (the amount of loss, damage or injury if an event happens or occurs).

The resulting "rating" determines the level of risk. The tables below provide guidance for measuring the likelihood and impact of risk.

Likelihood Scale

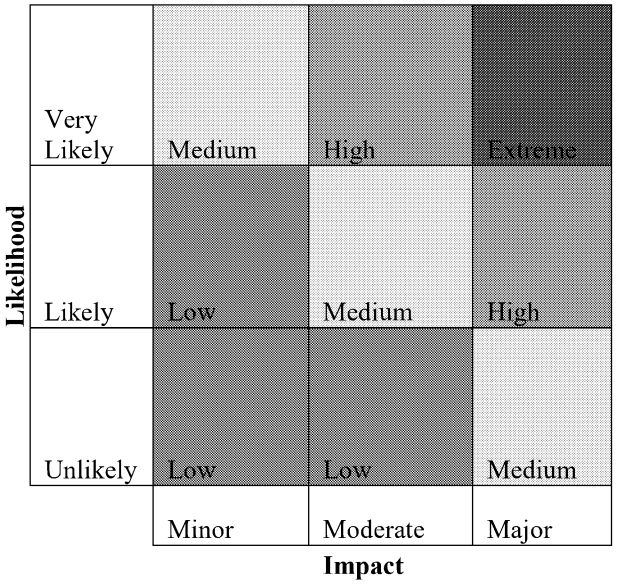
Likelihood	Description
Very Likely	Almost certain to happen during removal.
Likely	Probably will happen or chances are about even.
Unlikely	Probably will not happen.

Impact Scale

Impact	Consequence
Major	Significant consequences: Serious injury or fatality; extensive psychological trauma; major property or economic damage; major confrontation or significant disturbance.
Moderate	Medium consequences: Limited damage or minimal long-term consequences; minor injury; moderate emotional distress; some disturbance that may result in the failure of the removal.
Minor	Negligible or short-lived consequences: Slight disruption that does not result in the failure of the removal; Minor non-compliance or issue of insignificant concern to public; Mild emotional distress.

1) Rating the Level of Risk

Once the likelihood and impact of the risk is measured, the level of risk is rated using the Risk Matrix below.



Based on the level of risk identified in the risk matrix, the table below provides guidance on the requirement for escorts.

Rating	Impact on Safety/Security
Extreme	• Escorts are required and other strategies may be required to mitigate risk i.e., use of restraints, experienced officers, additional officer.
High	• Escorts are required.
Medium	• May proceed with removal with or without escorts, with plans to mitigate risk i.e., direct flight, escorts to last transit point.
Low	• Escorts are not required.

2) Completing the Escort Risk Assessment/Escort Request Form [BSF512]

Section 16 of this manual provides instructions on conducting the file review and pre-removal interview. During the pre-removal interview, an assessment can be made of the client's behaviour, comportment and their reaction toward their scheduled or imminent removal.

If the removals officer has determined through the file review and pre-removal interview that escorts may be required, the removals officer must complete the *Escort Risk Assessment/Escort Request Form [BSF512]* and submit it to their Supervisor, Manager or Assistant Director, along with copies of supporting documents and the client's file.

i) Transportation Liability Cases

Prior to completing the Escort Risk Assessment/Escort Request Form, the removals officer must review the individual's paper and electronic file to determine if the case is a Transportation Liability. If the removal is a Transportation Liability, the *Escort Risk Assessment/Escort Request Form [BSF512] is* not required, unless the airline is no longer operating. Operating airlines must arrange their own escorts, if escorts are required. If the airline is no longer operating (and the removal expenses will be reimbursed from the airline's security deposit, by invoice sent to the CBSA Transportation Obligations Unit), the removals officer must indicate this on the form. Note that CBSA officers will only perform airline liability escorts in exceptional cases, following concurrence from the Manager or Assistant Director, or in cases where the airline is no longer operating.

ii) Medical and Facilitation Escorts

If the client has a medical or mental health condition that requires supervision, a determination should be made by CBSA medical contractor whether a medical escort is required. The medical contractor's recommendation must be included, and if applicable, a Request for Medical Escort form, with the escort request.

Escort Types

Accompaniment Escort
If an escort is required strictly for facilitation purposes, such as the requirement of foreign administration, airline, or transit point, and there is no risk identified to warrant a risk-based escorted removal.

Risk-based Escort
When the individual who is to be removed presents a level of risk based on their criminal history or behaviour. Risk to the safety and security of the airplane, the general public, and the individual being removed are all factors that can lead to an escorted removal.

Transport Escort
Occurs when an individual under a removal order is being transported from one location to another within Canada, transported to the last departure point in Canada, or transferred by land to the United States POE. Security guards contracted by the CBSA will do this work where services are available.

39 Procedure: Assessment of the need for escorts

In order to approve or deny a request for escorts, the Supervisor, Manager or Assistant Director reviews the information provided on the Escort Risk Assessment/Escort Request Form [BSF512] and supporting documents. The Supervisor, Manager or Assistant Director also reviews the hard-copy file, and relevant CBSA systems. The most recent interview notes, detention review notes, police reports and sentencing reports on the file should be made available for review upon request.

In addition, the Supervisor, Manager or Assistant Director will discuss the request with the removals officer and ask all pertinent questions in order to validate the information provided regarding the impending removal, including that this information equates to the appropriate level of risk based upon the Risk Matrix. Factors to consider are the person's comportment, anticipated reaction to their return to the country of destination, the length of the trip, and/or the transit point(s).

The objective of assessing the need for escorts is to minimize the risk to the safety and security of the person(s) being removed, the travelling public, transportation company personnel and/or the officer(s) conducting the removal. The role of the officer is to gather pertinent information on the case, identify possible risk, and recommend to their respective managers, assistant directors or supervisors whether an escort is required. The final decision on the need for escort rests with the manager, assistant director or supervisor. Where it is determined that an escort is necessary, the following are important factors to consider in order to avoid unnecessary risk and ensure the success of the removal:

- the number of officers required to effect the removal;
- the physical capability of the officers to restrain the individual should it become necessary; and
- the circumstances and locations in which the removal will take place.

39.1 Determining the number of officers for escort

The determination of the number of escort officers to be assigned to the removal is made by the Supervisor, Manager or Assistant Director (or in some cases, the Director), based on the information provided by the removals officer, the information on file and the escort risk assessment.

i) Accompaniment Escorts

If an escort is required strictly for facilitation purposes, such as the requirement of foreign administration, airline, or transit point, and there is no risk identified to warrant an escorted removal, only one escort officer, of the same sex, is assigned to accompany the client to either the transit point or final destination. Two escort officers may be assigned when the airline or foreign officials specify that removal with one escort officer is not acceptable and despite efforts, no other agreement can be reached.

ii) Risk-Based Escorts and Detained Transport Escorts

When the level of risk is such that an escorted removal is warranted, the standard number of officers that are assigned to the removal is two. Three officers are only assigned to an escorted removal when absolutely necessary and in exceptional cases. An additional officer may be required when there is an extreme risk of bodily harm/death or physical resistance. Prior to assigning three officers, consideration must be made whether the risk may be mitigated by assigning two officers who are experienced with controlling violent individuals, using additional restraints as permitted by the airline and transit authorities, or assigning officer(s) who have built a rapport with the client and have been able to control the client through tactical communication. The length of the trip, including the length and number of transits and availability of detention facilities should not be prescribed factors when determining whether three officers are required.

Ongoing Assessment of Risk

There are situations up until boarding the aircraft where new information or new circumstances may warrant a re-assessment of risk. The decision to approve escorts may be changed to a decision to proceed without escorts if the individual being removed is now compliant. It is the responsibility of the removals officer, assigned escort officer(s) to immediately bring the new information to the attention of the Supervisor, Manager or Assistant Director, for consideration.

39.2 Examples of removal cases that may require an escort

The following is a non-exhaustive list of examples to assist in assessing the need for escorts. Two officers should be considered to escort an individual under the following circumstances:

- the individual has been charged with, or convicted of, a serious offence involving violence in any country. These offences may involve bodily harm (including death), weapons (including explosives), arson, hostage-taking, extortion, or acts against children;
- the individual has demonstrated an unwillingness to be removed or has made verbal or written threats against anyone in regards to their removal and/or it is anticipated that violence or untoward behaviour will be exhibited during the removal;
- the individual has been deemed by the Immigration, Refugees and Citizenship Minister to be a danger to the public;
- it is anticipated that problems may arise at the transit point or that the individual will avoid connecting to the ongoing aircraft; and
- the individual suffers from a medical condition which requires close supervision and the individual poses a safety or security risk. For further information on medical escort cases, refer to section 39.

39.3 Exceptional cases that may require an escort

The following are a few examples of exceptional cases in which an escort may be required:

- situations in which an individual has been convicted of a minor assault. The nature of the assault and the potential for violence at the time of removal will be the determining factors in these situations. If it is determined that an escort is required, two officers should be assigned;
- cases involving serious narcotic or drug convictions and the additional factors such as acts of violence or organized crime. The circumstances may vary from the need for no escort at all to the need for two officers. Individuals with minor narcotic or drug-related convictions will not normally be escorted unless there are indications that violence was, or may be, an issue;
- cases of serious criminal charges, particularly charges that are violence-related. In these cases, the individual should be escorted by at least two officers. When the individual is wanted by law enforcement authorities in another country for minor charges, the individual might need to be escorted depending upon circumstances such as their willingness to leave or the anticipated reception the individual may experience upon arrival at the country of destination. There may also be other law enforcement "liaison" issues that need to be factored into the decision to escort;
- individuals whom the CBSA knows have escaped or attempted to escape the CBSA or police custody may not necessarily require an escort, particularly if their scheduled flight is non-stop. The rationale for this approach is that, if a person appears at the airport voluntarily, then they are willing to leave Canada. However, if the individual has a repeated history of escape, or has made recent attempts to escape, serious consideration should be given to escorting such an individual to their final destination. In such cases where it is determined that an escort is required, two officers should be assigned; and individuals convicted of property-related or other offences involving non-violent acts should not be escorted unless there are extenuating circumstances determined in the risk assessment which warrant an escort. In such cases where it is determined that an escort is required, two officers should be assigned. (Property-related offences may include such crimes as theft, possession of stolen property, trespassing or fraud.)

39.4 Escorts of multiple removals

In multiple removal cases, the air carrier reserves the right to limit the maximum number of passengers under escort, considering the size of the aircraft and the level of danger involved. It

is important, in these cases, that the air carrier is aware of the number of individuals being removed on one flight, the ratio of escorts to removals and the nature of the cases involved.

The following guidelines are suggested for CBSA liability cases in which the individuals are not considered to pose safety or security risks and do not fall within the parameters of the profiles outlined earlier:

- 0 to 5 adults = no officer
- 6 to 10 adults = 2 officers
- 11 to 15 adults = 3 officers
- 16 to 20 adults = 4 officers

In cases where the air carrier requests a variance in the number of officers provided, the matter will have to be negotiated with the individual air carrier. The airlines should also be reminded that the CBSA officer would be responsible only for cases where the CBSA is liable for costs. The responsibility for the escort of airline liability cases rests with the airline, and these cases are not to be included in the calculation related to the above profiles.

Officers are reminded that there will be situations that do not fall within the categories above. It should therefore be understood that each case must be assessed in accordance with individual circumstances when determining the need for and the number of officers that may be required, bearing in mind the basic criteria outlined in the profiles. The final decision on whether or not individuals should be escorted ultimately rests with the manager or supervisor.

39.5 Removals involving transit points

Officers are not automatically assigned to ensure connections at transit points. There may be cases where CBSA officers are satisfied that there is no safety or security risk and that the person wants to return, has all the necessary documentation, has made personal reception arrangements at the destination, and will meet connecting flights at the transit point. An officer's presence should not normally be required in such cases.

One officer of the same sex should be assigned to accompany a person to their destination where CBSA officers are satisfied there is no safety or security risk and the need to accompany the person is dictated by transit requirements and/or the CBSA's obligations to satisfy established arrangements or to meet certain requirements imposed by other parties such as other countries or transportation companies.

39.6 Removal of minors

In instances where fewer than three children under the age of 16 years are accompanying adults, they will not be counted in the numbers for the assignment of officers. However, if there are more than three children, an additional officer should be considered.

Unaccompanied minors under the age of 13 should be removed with an accompaniment escort. Unaccompanied minors between the ages of 13 and 18 can be returned on direct flights to their country of origin, without escort, where the airlines will accept responsibility for the child during the trip and where no other safety and security risk exists. An officer should accompany children between the ages of 13 and 18 on non-direct flights or on direct flights where the airlines cannot accept responsibility for the child's care en route or where other safety or security risks exist.

In all cases of the removal of minors, reception with the family members or representatives of government departments or agencies responsible for child welfare should be arranged prior to departure.

39.7 Removal of violent persons

An individual who has a serious violent criminal history or who otherwise meets a profile requiring two officers should not normally be removed on the same aircraft with multiple removals. However, should this become necessary, the airline should be consulted and, if the airline agrees to the removal, two officers should be dedicated to that removal alone, exclusive of other officers involved in the multiple removals.

39.8 Removal with a *Canada Immigration Single Journey Document*

In situations where persons are being removed on a *Canada Immigration Single Journey Document* [IMM 5149] to countries where this document has been previously used without any problems, the CBSA officers should consult their supervisor or manager to determine that there is no safety or security risk. If no such risk exists and it is anticipated that removal will be successful using an IMM 5149B, an officer may not be required for escort. Whenever a person is removed on an IMM 5149B, the individual should be in possession of supporting documentation such as a birth certificate or national identity card. For further information on when to use an IMM 5149B, refer to section 22.5.

When an IMM 5149B is being used to remove a person to a specific destination for the first time, at least one officer of the same sex should accompany the individual being removed.

An officer may not be required for removals through transit points where the person concerned has an IMM 5149B and a visa, and the CBSA officers are satisfied there is no safety or security risk.

When a flight connection is necessary through a strategically important hub or connection point , at least one officer of the same sex should be assigned to accompany the person to the connection point only.

40 Procedure: Medical escorts

The CBSA may allow a federal government medical officer to act as an escort only when removal is at public expense and medical attention is required en route. Many removal offices employ the services of nurses from non-governmental organizations or correctional institutions, etc., to assist with cases that require medical attention. Refer to existing local office policy with respect to contracting this medical staff.

Decisions respecting the need to escort persons with medical conditions should be guided by whether the individual will require close supervision and qualified medical assistance in order to undertake the journey to their final destination without posing a safety or security risk. It may be necessary to assign two officers, in addition to the medical personnel, depending on the circumstances.

The following general principles have been established as a guide in determining when to seek medical assistance with respect to escorting foreign nationals who have a history of violent behaviour, or foreign nationals who may become violent or create a disturbance when removal is in progress.

Under no circumstances will any foreign nationals be taken to a physician solely for the purpose of being placed under sedation for removal from Canada. Where a foreign national has been taken to a physician for some other legitimate medical reason, the physician may address the question of sedation for removal as a secondary issue. If the physician decides to prescribe medication, the foreign national concerned must be asked if he or she wishes to take such medication, and if not, no medication is to be administered. The only exception is the psychiatric cases described in section 40.1 below.

40.1 Example of medical escort case

Cases in which medical treatment is being administered or the person is under psychiatric care or treatment in an institution or hospital usually involve:

- foreign nationals who are suffering from a medical condition that requires the administration of drugs at regular intervals, or
- foreign nationals who are currently in mental or psychiatric institutions or hospitals.

The first situation is one in which medication will have been prescribed for treating medical disorders (e.g., heart condition) that are considered serious enough to warrant the presence of a physician or registered nurse during removal. The physician or nurse is present only for the purpose of administering medication and/or monitoring the condition of the foreign national being removed from Canada. Any drugs administered are given to the patient of their own volition to treat the medical condition.

The second situation is one in which the foreign national being removed from Canada has been institutionalized for psychiatric treatment and is probably being returned to their home country for the continuation of treatment (i.e., usually to a mental institution or hospital). The medication administered in these cases is a continuation of the ongoing treatment prescribed by the psychiatrist or physician.

In either of these two situations, arrangements may be made for the removal from Canada of such foreign nationals under medical escort, if considered appropriate by the CBSA in consultation with the attending physician or psychiatrist. It will not be necessary to refer such cases to NHQ for concurrence before finalizing travel arrangements and effecting removal.

41 Procedure: Establishing emergency contacts

To be fully prepared when effecting a removal, officers should have the following emergency contact numbers with them:

- the telephone number and address of the Canadian embassy in countries of destination and transit, or the Canadian Embassy responsible for the country of destination;
- the telephone number, name and office address of the CBSA LO responsible for the country of destination or transit;
- contact details for the Canadian regional office duty supervisor; and
- contact details for the 24-hour watch office of Global Affairs Canada.

After regular working hours most Canadian offices abroad will automatically switch from the local consular emergency number to the Global Affairs' Watch Office. A small number of offices abroad will have emergency numbers that will activate a voice mail which should be checked regularly, while others have the calls directly re-routed to a duty officer cell phone. In cases where emergency assistance is required, officers may reach the Watch Office by calling (613) 996-8885 or 1-800-387-3124. It should be noted that the correct country code prefix for Canada would be required for direct dialing from overseas, and the 1-800 number may not work outside North America.

42 Procedure: Dealing with air carriers

Air carriers are required to comply with their existing flight safety and security procedures, which can be stricter than existing internationally regulated procedures. When officers are required to escort a subject, all airlines must be advised of the following information:

- the identity of the passenger under escort;
- the flight details;

- the reason for the escort; and the risk assessment of the passenger under escort as to safety or security.

During some non-airline liability removal cases, an air carrier may insist that an officer or officers accompany a person despite the determination that the individual does not constitute a safety or security risk. The airline has the final decision in these matters and can determine whom they will transport on their aircraft. Should the scenario arise, officers are encouraged to explore alternatives, including the review of the travel itinerary, routing and airline availability. Officers should be assigned only in cases where no other appropriate alternative is available.

42.1 Airline liability

Individual air carriers are responsible for making removal arrangements and providing escort officer(s) in situations where a transportation liability exists as described in ENF 15 – Obligations of Transporters. However, there will be instances in which the airline requests assistance in providing escort officers for the removal. Agreeing to such requests should be the exception rather than the rule and any such case should be immediately brought to the attention of the supervisor or manager. The primary consideration in agreeing to assist the airlines must be based on the risk assessment. Where a safety or security risk in removal has been determined, the person subject to the removal must be escorted. If the supervisor or manager agrees to provide the CBSA staff to effect the removal, there must be confirmation in writing regarding the agreement reached with the airline concerning the use of the CBSA officers. This agreement must also set out the expenses for which the airline will be liable. The letter will be hand-delivered and served on a responsible representative of the airline.

42.2 Using the document envelope

The *Removal Documents Envelope* [BSF 582] is specially designed for safekeeping papers such as passports, travel documents and tickets for foreign nationals subject to removal proceedings. The document envelope is addressed to the purser, who will inform the pilot. When making removal arrangements, the officer preparing the document envelope should take the following steps:

- complete the face of the envelope (full name, complete itinerary, etc.) and ensure that a current photograph of the foreign national is attached to the front of the envelope for ready identification;
- give the envelope and contents to the examining officer at the U.S. POE if the officer is turning the foreign national over to the United States Customs and Border Protection (USCBP);
- instruct the escort to carry the foreign national's envelope if the foreign national is being escorted to a destination or on part of the journey;
- instruct the officer to hand the envelope to the purser on the aircraft, with verbal instructions on the contents if these differ from the pre-printed notice on the face of the envelope, if the foreign national is unescorted or will no longer be escorted after a transit point.

At the time of removal, officers must also brief the purser (either verbally or by a letter to the captain) and provide a copy of the *Notice of Removal and Profile* [BSF560]. The CBSA recognizes that the primary responsibilities of every airline captain are the safety of passengers and crew, and the security of the aircraft. Certain airlines may also have a specific form that must be completed and provided to airline officials when escort(s) are present on an aircraft. In rare cases, a pilot will refuse to board a person based on the subject's demeanour or from the information provided to the pilot. Should these occasions arise, the officers conducting the removal must rely on their communication skills to provide any additional information to the pilot

that could affect the pilot's decision. Often, a pilot's initial determination may change once further information is provided by the escorting officers.

43 Procedure: Arranging for escorts

The CBSA is responsible for arranging all overseas escorts, including escorts to the U.S. border or, if circumstances indicate a need for special care, to the final destination in the U.S. Efforts should be made to minimize the number and length of stopovers.

The itinerary of a foreign national who is being removed to the U.S. and requires special care may include one or more stops within the U.S. before the final destination is reached. In this case, an officer should stay with the person until their final destination, or until the officer can leave the person in capable hands. Normally when a foreign national requires special care, the officer will continue to the final destination. If the officer requires ground assistance at any of the stopovers en route, the officer should ask the airport authorities or officials of the USDHSat the airport involved. In special care cases, unless the officer has already made appropriate arrangements for the person's reception at an alternative location, the officer should not leave the foreign national at any point other than the final destination.

The manager or supervisor must exercise discretion in deciding whether the foreign national to be removed requires an escort(s) while en route to the final port of departure from Canada. The manager or supervisor should consider the following questions:

- Does the foreign national have a serious criminal background, or was the foreign national serving a sentence?
- Is the foreign national a potential escapee or considered a danger to the public?
- Has the foreign national been previously removed?
- Is there evidence of mental health concerns?
- Is the foreign national under any special medication?
- Are there potential problems at transit points?

If the officer determines that the foreign national does not require an escort to another point of departure, the officer should:

- book and confirm the connecting flight, preferably leaving on the same day;
- notify the responsible airlines; and notify Canadian officials at transit points.

Detention increases costs and workload at the receiving port. If there is more than a three-hour layover between connecting flights, or if the officer must detain the foreign national overnight, the officer should include in the foreign national's documentation a signed *Order for Detention* [BSF 304].

43.1 Removal arrangements prepared by other officers

Officers making removal arrangements should give the escort(s) involved in the removal written instructions outlining the nature of the case, the action required, relevant documents and the foreign national's baggage and personal effects, if the officer has custody of them. The instructions must contain the following information:

- case history: a brief outline noting citizenship, age, basis for removal, accompanying family members, and whether the foreign national is being removed or repatriated;
- flight arrangements: the flight number and carrier, port of departure and departure time;
- instructions: if the foreign national is being escorted from the place of residence to the port of departure, escorting instructions must include dates, hours of departure, cities, transfer points and stopovers;

- documents: passport and number, medical information, detaining order, Certificate of Departure [IMM 0056B], removal order, notice of removal profile and receipts for the foreign national's property placed in an Envelope: Removal Documents [BSF 582] ;
- character of the person: information about the foreign national's attitude to removal, behaviour in jail (in applicable cases), and any other information disclosed on file that might be of assistance to the escorting officer; and return to duty: the hour and date on which the escorts are to report back.

43.2 Advance notification to the port of departure

When the foreign national who is being removed, escorted or not, transits at a port of departure in Canada, the officer making the removal arrangement should advise the port of the foreign national's arrival at least two days in advance by facsimile or e-mail and follow up by telephone. Since the receiving port has had no prior contact with the individual, it will need all the useful information the officer can provide. International airlines often seek detailed information on foreign nationals being removed.

The following information should be included in the message:

- the foreign national's file number;
- the foreign national's description and sex;
- the names and ages of all family members, if accompanying;
- arrival and departure information;
- details of any previous detention;
- the foreign national's mental attitude;
- the reason for removal;
- whether the foreign national is detained; and whether the foreign national will be escorted and, if so, the names of the escort(s).

The foreign national will be carrying a *Certificate of Departure* [IMM 0056B] with a photo affixed. The receiving port can use the certificate to confirm that the foreign national is the subject of the removal order. The officer should also arrange to have the foreign national's documentation placed in an *Envelope: Removal Documents* [BSF 582] and transferred from the first airline's purser to the connecting flight's personnel.

43.3 Luggage and personal finances

When the officer accepts the foreign national into custody, the institution or immigration station may require receipts for the foreign national and the foreign national's effects. If so, the officer must get a complete list of valuables, money or baggage belonging to the foreign national and see that this list appears on the receipt. A copy should be retained and placed on file when the officer returns to duty.

Often, family members will bring in personal effects or funds to an inland removal office to assist their relative who is subject to removal. A written receipt should be provided. When these effects are returned at the completion of the escort, officers should obtain a signature from the person being removed to acknowledge that these effects have been returned. In the absence of a receipt, the officer should record this information in their notebook. If an officer is not diligent in recording the return of these personal effects and funds, then the CBSA or the officer could face claims of theft or loss of effects.

The officer must ensure that the foreign national's baggage has been collected, that it accompanies the foreign national when removal is effected, and that it is checked through to the final destination whenever possible.

Whenever possible, officers should pick up and cash any pay cheques belonging to the foreign national and conclude all banking arrangements on behalf of the foreign national. Money should be exchanged, if possible.

Officers should advise foreign nationals under a removal order to limit their effects so as not to exceed the free baggage allowance limits imposed by transportation companies. Any excess to the baggage allowance is the responsibility of the foreign national, and arrangements must be made to ship excess belongings at their own expense.

43.4 Escorts for removal via the U.S.

Immigration Customs Enforcement (ICE) requires five days advance notice to approve requests for all transits of third country nationals. Unless officers make other arrangements with ICE, it is the CBSA's responsibility to arrange for an escort for removal via the U.S. if the person must deplane in the U.S. en route to a third country. This provision applies even if the airline does not require the person under removal order to be escorted.

43.5 Escorts for removal via countries other than the U.S.

There are countries other than the U.S. that are frequently used as transit points and may also require the presence of an officer to facilitate the removal. A supervisor or manager may agree to deploy escort officers when persons are removed via transit points, as the CBSA requires continued access to these transiting hubs for the continued success of the removals program.

43.6 Escort by transportation companies

If a transportation company is responsible for ensuring the departure of a foreign national from Canada, the company must make its own escort arrangements for travel outside Canada.

If the company does not offer an escort to a foreign national within Canada, it must be reminded in writing of its legal obligation to convey such persons. If the transportation company continues to refuse to provide an escort officer, officers may escort the foreign national, but expenses for the escort should be charged to the company (see ENF 15, section 5.1).

Aside from escorting foreign nationals to U.S. ports of departure to third countries, only in exceptional circumstances will an officer escort a foreign national outside Canada to accommodate a transportation company.

The arrangements and all removal and escort costs must be clearly documented and accepted in writing by the airline.

44 Procedure: Taking precautions to prevent escape

This section provides details on taking safety precautions to prevent escape and using holding centres or cells when transiting Canada.

44.1 Taking safety precautions

Officers must exercise every caution to prevent the escape of foreign nationals in their custody, and must decide whether handcuffs or other restraining equipment should be used according to the circumstances. Officers should take the following precautions:

- do not handcuff, chain or tape the subject to any immovable object while in transit;
- when transporting a foreign national by automobile, ensure that the foreign national is seated on the passenger side of the rear seat;

- if required a second officer must sit directly behind the driver;
- check the vehicle and surrounding area to ensure that there are no objects that could be used by the foreign national as a weapon;
- if the foreign national causes a disturbance during the removal, try to remove the foreign national from public view as quickly as possible;
- when using public transportation, arrange if possible to enter the vehicle ahead of the other passengers, sit at the rear of the vehicle, and ensure that you and the subject are the last passengers to disembark; and
- do not linger with the foreign national in public places.
- the officer(s) must remain alert at all times and always keep the subject in sight and at close distance;
- if transportation is delayed, officer(s) should try to secure a room in the terminal away from the general public.

44.2 Use of holding centres, cells when transiting through Canada

Other regions can provide their cells or holding centres when officers are transiting a removal through Canada. Use of these facilities should be considered if:

- an officer is aware that there will be several hours before the onward flight to the destination; and
- an officer experiences unforeseen delays before taking the onward flight.

If it is determined that a holding cell is required in these cases, officers should contact the CBSA office at the transit point to obtain the procedures for admittance to a holding centre or cell, including instructions on the forms that must accompany the detention and release of the detainee.

45 Procedure: Actions to take upon escape or attempted escape

This section sets out the actions to take regarding escape or attempted escape from the custody of the CBSA or the facilities of a transportation company, and the preparation of a Use of Force Incident Report [BSF586].

Escape or attempted escape from CBSA custody

IRPA provides for the prosecution of foreign nationals who escape or attempt to escape from lawful custody or detention [A124(1)(*b*)].

Officer(s) must take the following action immediately if a foreign national escapes from custody:

- notify the police force of jurisdiction;
- notify the nearest CBSA manager or supervisor, who will in turn notify by e-mail or facsimile the director of the region concerned. The e-mail or facsimile should give details of the identity of the foreign national and place of escape unless the officer is instructed otherwise;
- enlist the help of other local officers to search the area thoroughly and provide any other assistance necessary;
- if the escape occurs outside Canada, notify the police force of jurisdiction and the nearest migration integrity officer for advice on how best to handle the situation in the local context;
- if the escape occurs in the U.S., notify the nearest USCBP or ICE officer and the manager of the Canadian port responsible for the case. The port manager will then notify the appropriate officials;

- the officer should complete a Use of Force Incident Report [BSF586] by the end of their shift or as soon as reasonably practicable;
- submit a full written narrative report to their manager or supervisor, providing details of events leading up to the escape, the escape itself and action taken following the escape. As soon as a complete investigation has been concluded, the manager or supervisor at the port of origin must submit a full report to the area manager. The report must contain any observations or recommendations from the manager that may assist in determining the cause of the escape and preventing future escapes through proper remedial action. The area manager must forward the report with any necessary comments and recommendations to the Director of Inland Enforcement;
- if the escapee is not located, the officer must issue a warrant under A55(1) and enter it into CPIC, issue a lookout and update GCMS/NCMS immediately; and
- when the escapee is again placed in custody, the officer(s) must inform all authorities previously notified of the escape.

45.1 Escape or attempted escape from transportation company facilities

If a foreign national escapes from the custody of a transportation company's facilities, the local CBSA manager must immediately:

- notify the nearest municipal or provincial police and the RCMP;
- notify by e-mail or facsimile the director of the region concerned. Details in the e-mail or facsimile should include the identity of the foreign national, place of escape, name of the transportation company responsible for the escapee, and the method of escape;
- obtain a written report on the escape from the transportation company or crew member;
- conduct a full investigation into the cause of the escape and all precautions taken by the transportation company. If there is negligence or failure on the part of the transportation company to provide proper security or facilities, make recommendations for penalty action or any remedial action necessary to prevent future escapes;
- if an officer was involved, on returning to work, the officer should complete a Use of Force Incident Report [BSF586];
- send the report to the area manager, who will forward it with any necessary comments or recommendations to the Director of the Inland Enforcement Division at the CBSA NHQ. The officer must also ensure that a warrant is issued under A55(1) and entered into CPIC if the escapee is not located immediately;
- and input details of the incident into GCMS/NCMS immediately.

If the transportation company is at fault, the Director of the Inland Enforcement Division at the CBSA NHQ must write to the company advising it of its responsibility under IRPA and the Regulations, and that it is liable to a penalty. The transportation company has 30 days in which to show cause why the penalty should not be imposed. The Director of the Inland Enforcement Division at the CBSA NHQ will then send to the Director General a full report of the escape from the transportation company's care or custody. This report must provide comments on the cause of the escape, the details of the escape itself, any remedial action that has been taken to prevent further escapes, and copies of all correspondence to the transportation company.

The CBSA NHQ will reply to any representations from the transportation company, informing it in writing of the amount of the penalty when one is imposed and what action, if any, is required for an additional security deposit. When the escapee is again placed in custody, all the authorities previously notified of the escape should be informed.

46 Procedure: Persons refused entry to another country

Officers should take appropriate action if a person was not granted lawful admission to another country. In these cases, the foreign national who has not met the departure requirements under R240 cannot be said to have enforced their removal order.

PART V – FILE CLOSURE

47 Procedure: File clean-up after removal

Once a person has been removed from Canada, there are still additional procedures that must be completed before the file can be considered complete. The officer responsible for the removal should ensure that:

- the IMM 0056B is on file and entered into GCMS/NCMS and any local case-tracking procedures are completed;
- NCMS is updated and all processes concluded;
- the appropriate copy of the removal order has been sent to the Records Services Division, Microfilm Unit at IRCC-NHQ to be microfilmed; and
- case notes that are relevant to the removal are added to the file, including a copy of any incident report if the officer encountered such actions as physical resistance or threatening comments on an escorted removal.

The officer should also take the following steps:

- if necessary, request that the return of a security deposit or guarantee for compliance is actioned. For further information on the refund or forfeiture of a security deposit or guarantee, refer to ENF 8;
- for billing purposes, contact the appropriate officer in transportation liability cases where the CBSA has made removal arrangements on behalf of the transportation company. The officer must ensure that an BSF 510 form is completed that outlines all costs incurred in removing a person from Canada (with the exception of detention costs). Expenses include flight costs for deportees and escorting officers, fees for travel documents, fees for visas, wages of escorting officers including any overtime, accommodations, meals and incidentals, public transportation costs, entry/exit permits, etc.;
- if appropriate, contact the Crown counsel to confirm that a person has been removed from Canada;
- notify other agencies (i.e., parole, probation, welfare, health, Human Resources and Social Development Canada, etc.) to confirm that the person has been removed from Canada; and
- return any seized government-issued documents to the respective agencies (i.e., driver's licence, social insurance cards, health cards, etc.). For further information on disposing of seized documents, refer to ENF 12, section 11.

There may also be other local procedures in place for larger offices, such as archiving files. Officers should refer to local office policy for concluding removal cases. On occasion, a file can be closed for reasons other than the successful removal of a person from Canada. Some possibilities include the following.

- If a person is deceased, GCMS should be updated accordingly, along with explanatory remarks. Officers should update NCMS and complete the notes to file.
- If the USDHS advises the CBSA that a person has been apprehended in the U.S. and deported to their country of nationality, CBSA can confirm a person is no longer in Canada. An update to GCMS should be entered along with explanatory remarks. Officers should update NCMS and complete a memo to file;

- If an officer at a Canadian mission outside Canada has enforced a removal order pursuant to R240(2) and issued a Certificate of Departure, visa officers have been instructed to send the responsible removal office in Canada a copy of the notes and the IMM 0056B. Upon receipt, the officer at the removal office in Canada should input the provided information into GCMS/NCMS.
- If a decision is made to grant permanent resident status, officers should update NCMS. The removal order becomes void when the person becomes a permanent resident under A51.

Officers must be satisfied that the file is no longer considered an active removal case before concluding. If officers have any concern about whether a case should be closed, they should contact their manager or supervisor for assistance.

48 Procedure: Adding previously deported persons into CPIC

The primary objective for entering previously deported persons (PDP) into the Canadian Police Information Centre (CPIC) is to enhance public safety and security by providing peace officers with the necessary information to form reasonable grounds that the person may be arrested without a warrant under A55(2)(*a*). The CPIC-PDP database will equip peace officers across Canada with information that a foreign national has been deported from Canada, has returned to Canada without the authorization prescribed under A52(1) and, at the time of the person's removal, there were reasonable grounds to believe that the person was a danger to the public or was unlikely to appear.

After a name is queried in CPIC and is a direct match with a person found in the PDP database, CPIC will instruct law enforcement partners to contact the WRC for further assistance. For the purposes of arrests made without a warrant under IRPA, peace officers as defined in section 2 of the *Criminal Code* have the authority under A55(2)(*a*) to arrest and detain a foreign national without a warrant. For further information on arrest and detention by peace officers under IPRA, see ENF 7, section 16.

Information on individuals in the CPIC-PDP database originates from the GCMS-PDP database. For more information on who will be added to the GCMS-PDP database, see section 48.1 below; for information on who will be added to the CPIC-PDP database, see section 48.2 below.

48.1 Who will be added to the previously deported persons database in GCMS?

Persons issued a *Certificate of Departure* [IMM 0056B] and removed from Canada under a deportation order or a departure order that has become a deportation order will be added to the GCMS-PDP database, except where the removal order was issued to a person described in A42(b) as an accompanying family member and is therefore exempted from the need for authorization to return to Canada as required under A52(1).

In such cases, the deportee will be added to the GCMS-PDP database and a previous deportee (PREV.DEP) flag will be enabled in GCMS.

Note: Persons removed pursuant to exclusion orders and departure orders will not be added to the GCMS-PDP database at this time.

48.2 Who will be added to the previously deported persons database in CPIC?

There will be an automatic transfer to the CPIC system of PDP information on individuals who meet the criteria in section 48.1 above and for whom, at the time of departure, there are reasonable grounds to believe that the person is either:

- a danger to the public; or
- unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under A44(2).

49 Procedure: Repayment of removal expenses

Under the Regulations, the fee to reimburse removal expenses includes persons who were removed at public expense, not just those who were deported. Removals are defined in R229 to include departure orders, exclusion orders and deportation orders. These fees apply only in situations where the relevant costs have not been recovered from a transportation company.

As set out in R243(*a*) and R243(*b*), a person must repay the following costs incurred for removal:

- $750 for removal to the U.S. or Saint-Pierre and Miquelon;
- $1,500 for removal to any other destination.

Once an officer determines that the Authorization to Return to Canada will be granted, the office in Canada where the removal arrangements were made should inform the officer outside Canada whether repayment under R243 is applicable. Officers should collect the prescribed cost for each person included in the removal order for whom the CBSA paid removal costs. Collection of this fee will occur prior to the Authorization to Return to Canada being granted under A52(1).

Note: Removal costs can be recovered from a foreign national only when Her Majesty in right of Canada incurred expenses for the person's removal and the CBSA has not recovered liability costs from a transportation company.

49.1 Repayment of removal costs for departure orders

Persons who were removed under a departure order at the CBSA's expense and who return to Canada do not require authorization under A52(1) but will be subject to the cost recovery fees for the repayment of removal costs at the time of entry. If the foreign national cannot or will not repay the costs of removal, the officer at the POE will determine whether the person should be reported under A44(1) for non-compliance pursuant to A41 with remarks that the person has failed to comply with R243.

49.2 Repayment of removal costs for exclusion orders and the requirement of Authorization to Return to Canada

Persons who were removed under an exclusion order at the CBSA's expense and are returning prior to the allowed period of time as prescribed in R225(1) or R225(3) must first obtain an *Authorization to Return to Canada* [IMM 1203B] from an officer in accordance with A52(1) (see IR 5 for the applicable cost-recovery fee). Second, they must repay the prescribed costs of their removal as per R243(*a*) or R243(*b*).

49.3 Repayment of removal costs for exclusion orders that no longer require Authorization to Return to Canada

Persons who were removed under an exclusion order at the CBSA's expense and are returning to Canada after the expiry of the prescribed period of time under R225(1) or (3) do not require the *Authorization to Return to Canada* [IMM 1203B] but must repay the prescribed costs of their removal pursuant to R243(*a*) or R243(*b*).

49.4 Repayment of removal costs for deportation orders

Persons who were removed at the CBSA's expense must always first obtain an *Authorization to Return to Canada* [IMM 1203B] from an officer in accordance with A52(1) if they are subject to:

- a deportation order pursuant to R226(1), or
- a departure order that has become a deportation order pursuant to R224(2).

Second, the foreign national must repay the prescribed costs of their removal per R243(*a*) or (*b*).

50 Procedure: Victims Bill of Rights

As part of statutory obligations under the Canadian Victims Bill of Rights, subparagraph 26(1)(b)(v) of the Correctional and Conditional Release Act requires that Correctional Services of Canada (CSC) notify registered victims of the offender's removal from Canada, if removal occurs before the expiration of the sentence. Because of this, the CBSA must provide CSC with the removal date through the Offender Management System (OMS).

As part of departure verification activities following the removal of a federal offender (relevant dates can be found in OMS and/or on file), the officer shall input the date of removal in the immigration screen of the OMS if the offender's sentence has not expired. This should be done as soon as possible following removal in order that CSC can meet its statutory obligations to provide victims with relevant and timely information concerning the removal, and should be part of regular post-removal file clean-up activities.

51 Procedure: Electronic Travel Authorization Cancellation

The Electronic Travel Authorization (eTA) is an entry requirement that allows Canada to pre-screen visa-exempt travellers, apart from U.S. citizens and certain other exempt travellers, in order to flag foreign nationals with any known inadmissibility concerns before they travel to Canada by air.

An eTA will be valid for up to five years or until the passport expires, whichever comes first. However, an eTA can be cancelled in cases where an officer determines that a foreign national is inadmissible. Pursuant to section 12.06 of Immigration, Refugee Protection Regulations (IRPR), an officer may cancel an electronic travel authorization that was issued to a foreign national if:
(a) the officer determines that the foreign national is inadmissible; or
(b) the foreign national is the subject of a declaration made under subsection 22.1(1) of the Act.

As per the IRCC Instrument of Designation and Delegation, inland enforcement officers are delegated to cancel an eTA. If an individual is removed but still has a valid eTA, the IEO must first review the file and determine that the person is inadmissible to Canada, make notes documenting that decision, and then cancel the eTA when closing the file. Once the removal has been enforced, the officer will inactivate the eTA in GCMS and issue correspondence that will notify the foreign national by email of the reason the eTA was cancelled and further options they may pursue (may seek a Judicial Review of the decision at the Federal Court level). The "How to Inactivate an eTA, Issue eTA Cancelled Letter" guide at https://cbsawikiasfc.omega.dce-eir.net/x/v5kkC provides instructions on how to inactivate the eTA and notify the traveller of the cancellation.

Appendix A – The status of persons living in U.S. Territories and Protectorates

1. U.S. Citizens (non-voting) Guam

Northern Mariana Islands

Puerto Rico

Virgin Islands

2. U.S. Nationals American Samoa

Palau

3. Non-U.S. Citizens/Non-U.S. Nationals Marshall Islands

Micronesia

Appendix B – 1 Letter of Convocation

[Insert CBSA letterhead]

CALL-IN TO INTERVIEW

Client I.D._____:

Date: DD MM YYYY

Name

Number, Street

City, Province

Postal Code

Dependants: _____

In order to update your file, it is necessary that you and your dependants listed above report for an interview to the Canada Border Services Agency (CBSA) office as indicated below:

LOCATION: _____

DATE: _____

TIME: _____

You and each of your dependants listed above are required to bring this letter and the following items to the interview:

- A valid or expired passport;
- A birth certificate or identity card issued by your country of citizenship;
- Four (4) passport size photographs;
- A Social Insurance Card;
- All other documents issued by the Government of Canada; and
- Any documents concerning criminal matters, scheduled court dates or matters of probation and parole.

Failure to report for this interview will result in a Canada-wide warrant being issued for your arrest. **No interpreter will be provided at this interview.** A friend or family member who speaks English or French may accompany you.

PRE-REMOVAL RISK ASSESSMENT

You may be entitled to apply for a Pre-Removal Risk Assessment (PRRA).

The PRRA program has been set up to provide protection to persons in Canada who would be at risk of persecution, torture, or cruel and unusual treatment or punishment if returned to their country of nationality or former residence. By applying in writing for a PRRA, entitled persons may describe the risks they believe they would face if returned to their country. Persons whose PRRA applications are approved may be able to remain in Canada.

If entitled to apply, you will be notified at your interview— and you will be given a kit called *Applying for a Pre-Removal Risk Assessment,* which includes an application form and an information guide explaining how to apply. If entitled, and you apply for a PRRA, the CBSA will not enforce your removal from Canada for the duration of your PRRA.s

Officer _____

Officer's Signature

cc Counsel _____

Appendix B – 2 Letter of Convocation (previous PDRCC)

[Insert CBSA letterhead]

CALL-IN TO INTERVIEW (PREVIOUS PDRCC)

Client I.D._____:

Date: DD MM YYYY

Name

Number, Street

City, Province

Postal Code

Dependants: _____

In order to update your file, it is necessary that you and your dependants listed above report for an interview. Please report with this letter to the Canada Border Services Agency (CBSA) office at:

LOCATION: _____

DATE: _____

TIME: _____

You and each of your dependants listed above are required to bring this letter and the following items to the interview:

- A valid or expired passport;
- A birth certificate or identity card issued by your country of citizenship;
- Four (4) passport size photographs;
- A Social Insurance Card;
- All other documents issued by the Government of Canada; and
- Any documents concerning criminal matters, scheduled court dates or matters of probation and parole.

Failure to report for this interview will result in a Canada-wide warrant being issued for your arrest. **No interpreter will be provided at this interview.** A friend or family member who speaks English or French may accompany you.

PRE-REMOVAL RISK ASSESSMENT

You submitted an application under the Post Determination Refugee Claimants in Canada Class (PDRCC).

The PDRCC no longer exists; however it has been replaced by the Pre-Removal Risk Assessment (PRRA). The PRRA is part of the new *Immigration and Refugee Protection Act*, which came into force on June 28, 2002.

Your PDRCC application has been transferred to the PRRA program and will be considered in accordance with the PRRA provisions. At your Interview, you will be given information on how to update the submissions you made under your PDRCC application. The CBSA will not enforce your removal from Canada for the duration of your PRRA.

Officer _____

Officer's Signature

cc Counsel _____

Letter Issued at: _____

Appendix C – 1 Notification of PRRA for failed refugee protection claimants

http://cicintranet/connexion/tools-outils/form/documents/word/Noti_non_claimant.doc

http://cicintranet.ci.gc.ca/Manuals/immigration/enf/enf10/enf10App6_e.asp#wp1019352

Appendix C – 2 Notification of PRRA for non-refugee-protection claimants

http://cicintranet/connexion/tools-outils/form/documents/word/Noti_non_claimant.doc

http://cicintranet.ci.gc.ca/Manuals/immigration/enf/enf10/enf10App7_e.asp#wp1020397

Appendix D – Statement of No Intention

http://cicintranet/connexion/tools-outils/form/documents/word/StatementNoIntent.doc

http://cicintranet.ci.gc.ca/Manuals/immigration/enf/enf10/enf10App8_e.asp#wp1020399

Appendix E – Letter to attend and pick up decision

[Insert CBSA letterhead]

PRE-REMOVAL RISK ASSESSMENT (PRRA) DECISION

Client I.D._____:

Date: DD MM YYYY

Name

Number, Street

City, Province

Postal Code

Dependants: _____

This is to advise you that a decision has been made with respect to your application for a Pre-Removal Risk Assessment. To receive this decision, please report as indicated below:

DATE: _____

TIME: _____

LOCATION: _____

You and each of your dependants listed above are required to bring this letter and the following items to the interview:

- A valid or expired passport;
- A birth certificate or identity card issued by your country of citizenship;
- Four (4) passport size photographs;
- A Social Insurance Card;
- All other documents issued by the Government of Canada; and
- Any documents concerning criminal matters, scheduled court dates or matters of probation and parole.

Please note that your attendance and that of your dependants listed above is **mandatory**. Failure to report to this office on the above mentioned date and time will result in a Canada-wide warrant being issued for your arrest.

No interpreter will be provided at this interview. You may be accompanied by a family member or a friend who speaks English or French.

You will have the opportunity to request a copy of the notes made by the immigration officer that considered your application.

Officer _____

Officer's Signature

cc Counsel _____

Letter Issued at: _____

ENF 20

Detention

Canada

Table of contents

Updates to chapter

Listing by date

2020-03-23

Multiple sections have been reorganized to ease the reading.

Section 4.3, Forms and publications, Detention Cell Log and Instructions (BSF481) and Detention Cell Log (BSF481-1) have been merged. BSF508, previously named Review of Detention by Officer, has been revised and renamed to Detention Notes.

Section 6.6, Factors: identity not established, paragraphs on cooperation have been revised.

Section 6.7, Factors: detention on entry to complete the examination, clarifications have been added regarding urgent medical treatments.

Section 6.10, Other regulatory factors and best interests of the directly affected child, and 6.11, Detention of minor children (under 18 years of age), have been updated following the introduction of two IRPR amendments.

Section 7, Detentions facilities, has been updated.

Section 9, Procedure: detention, the table has been updated.

Section 9.1, Data entry, has been updated.

Section 9.3, Order for Detention, has been created.

Section 9.4, Detainee medical needs, subsequent assessment requirements and section 9.5, Placement: national risk assessment for detention have been revised.

Section 9.6, Management review of detention cases, has been revised to streamline the reviewing process.

Section 10.2, In-custody death or life-threatening condition notification, has been created.

Sections 11 to 11.6 have been created to clarify the placement and transfer of detainees from a non-IHC region to an IHC.

Section 12, Procedure: release by officer before the first detention review, the table has been updated.

Section 13, Transitional measures, has been erased.

Annex A, Detention Checklist, has been created.

Annex B, National Directive for the Detention or Housing of Minors, has been updated following the introduction of two IRPR amendments.

2018-11-20

Section 3.1, Authority to detain a person, Section 3.2, Regulatory factors and conditions, Section 5.3, Grounds for detention and section 5.8 have been updated with the coming into force of the Protecting Canada's Immigration System Act.

Section 3.3, Forms and publications, available gender identities has been clarified.

Sections 5.4 to 5.8 have been moved and updated with new detention factors.

Section 5.9, Factors: mandatory arrest and detention of designated foreign national, has been created.

The section on alternatives to detention has been removed and transferred to ENF 34.

Section 5.12, Housing of minor children (under 18 years of age), has been added.

Section 5.13, Vulnerable groups, the term "vulnerable groups" has been renamed "vulnerable persons".

Sections 5.13 and 5.14, redundant text has been moved and a new jurisprudence case has been added.

Section 7, Detention: procedure, has been reshaped to facilitate its use by officers.

Section 7.2, Officer's detention notes, has been moved.

Section 7.3, Management review of detention decision, has been updated.

Section 8, Care of the detainee while awaiting transfer, and Section 8.1, Procedure: suicidal and self-harmful detainee, have been added.

Section 9.1, National risk assessment for detention, clarifications have been added regarding offences where a detainee was found not guilty, and common crime examples have been added.

Section 9.3, Vehicular transport of detainees, has been added.

Section 10, Procedure: release by officer before the first detention review, has been modified, and section 10.1 has been added with information regarding release of designated foreign nationals.

Section 12.1, Canadian Red Cross, has been updated to add information regarding the CBSA notification requests.

Annex A, Detention Checklist, has been created.

Annex C, Child protection services and family centres, was been updated with information for the Atlantic and Prairies regions.

2018-02-12

ENF 20 has been updated to reflect changes to the National Risk Assessment and Detainee Medical Needs forms. Further, changes have been made to reflect the decision-making process regarding detention. These changes will ensure that officers have clear guidance regarding detention decisions and placement of a detainee in a Canada Border Services Agency Immigration Holding Centre or provincial correctional facility.

Section 1, What this chapter is about, has been updated to add contact information.

Section 3.3, Forms and publications, has been amended, and the brochure titled “Information for People Detained Under the *Immigration and Refugee Protection Act*” has been added.

Section 5.8, Identity, has been amended to remove information contained in other sections.

Section 5.10, Detention of minor children (under 18 years of age), has been amended, and a new reference to the National Directive for the Detention or Housing of Minors has been added in Annex A.

Section 5.11, Vulnerable groups, has been moved and updated to include new vulnerable groups.

Section 5.12, Alternatives to detention, and section 5.13, Third party risk management programs, have been removed as their content will be in ENF 34.

Multiple sections have been updated to reflect the name change of Citizenship and Immigration Canada (CIC) to Immigration, Refugees and Citizenship Canada (IRCC) and of the Minister of Citizenship and Immigration to the Minister of Immigration, Refugees and Citizenship.

Section 6 has been updated with new definitions for “alternatives to detention”, “best interests of the child” and “unaccompanied minor”.

Section 8.1, Procedure: review of detention decision, has been created to clarify when the officer’s initial detention decision must be reviewed by another officer.

Section 8.2, Informing the Immigration and Refugee Board of a detention review, has been created.

Sections 9, 9.1, 9.2 and 9.3, Transfer of a detainee, have been rewritten to include new directives regarding the national risk assessment for detention form, the detainee medical needs form and the vehicular transport of detainees.

Section 10, Procedure: release by officer, has been updated to remove information contained in other sections.

Sections 11, 11.1, 11.2 and 11.3, Place of detention, have been moved and revised to include types of detention facilities, levels of risk and new detention agreements with provincial governments.

Section 12, Detention program monitoring, has been added.

Section 13, Transitional measures, has been moved.

2015-12-22

The detention forms have been updated and converted to the CBSA numbering system (BSF304, 579, 507 E, 508 E, 566, 524, 481, 481-1, 578, 754, 754-1, 674 and 735).

Section 8, Procedure: detention, has been updated to remove information contained in other chapters.

Section 9, Procedure: national risk assessment for detention, and section 9.1, National risk reassessment for detention, have been created to include a new requirement to ensure the safety and well-being of detainees.

Section 12, Place of detention, has been amended to reflect the closure of the Kingston Immigration Holding Centre and the maximum length of detention at the Vancouver Immigration Holding Centre has been reduced to 48 hours.

Multiple sections have been updated following the Field Operations Support System (FOSS) decommissioning.

1. What this chapter is about

This chapter offers guidance to Canada Border Services Agency (CBSA) officers at ports of entry (POE) and at inland enforcement offices who are delegated to detain under the *Immigration and Refugee Protection Act* (IRPA). It also states the principles underlying CBSA's detention policy and describes the administrative and legal framework within which detention operates.

References to IRPA appear in the text with an "A" prefix followed by the section number. References to the *Immigration and Refugee Protection Regulations* (IRPR) appear with an "R" prefix followed by the section number.

Requests for clarification, questions and comments in relation to this manual should be addressed to the CBSA Detentions Unit Programs Branch's generic mailbox at Detention-Programs@cbsa-asfc.gc.ca.

2. Definitions

Any procedure under the IRPA	"Any procedure" refers to any process with regard to a person's application or status, whether it is initiated by the person, by IRCC or by the CBSA, that has arisen in the normal course of the immigration system. "Any procedure" does not include investigations.
Alternatives to detention (ATDs)	Refer to ENF 34, Alternatives to Detention
Best Interests of the Child (BIOC)	An international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and the Convention on the Rights of the Child. It is also a rule of procedure that includes an assessment of the possible impact (positive or negative) of a decision regarding the child or children concerned.
Reasonable grounds to believe	Reasonable grounds to believe are a set of facts and circumstances that would convince a normally prudent and informed person. They are not mere suspicions. The opinion must have an objective basis.
Reasonable grounds to suspect	Reasonable grounds to suspect, a lower standard than to believe, are a set of facts or circumstances that would lead the ordinarily cautious and prudent person to have a hunch or suspicion.
Protected person under A95(2)	A protected person is a foreign national on whom refugee protection is conferred under A95(1), and whose claim or application has not subsequently been deemed to be rejected under A108(3), A109(3) or A114(4).
Minor (child)	A minor is defined under the IRPA and the *Convention on the Rights of the Child* as a person under the age of 18. They are considered to be a minor in the federal context (R249).

Criminal organization within the meaning of A121.1(1)	A criminal organization within the meaning of A121.1(1) means a criminal organization as defined in subsection 467.1(1) of the *Criminal Code*.
Unaccompanied minor	A minor or siblings travelling together who do not arrive in Canada with their parent(s) or legal guardian(s) or do not arrive in Canada to join such a person.

3. Program objectives

A3(1) and (2), which outline the objectives of IRPA, list two objectives that are directly linked to the CBSA's responsibility for the enforcement of IRPA regarding both immigration and refugee programs:

- to protect the health and safety of Canadians and to maintain the security of Canadian society; and
- to promote international justice and security by fostering respect for human rights and by denying access to Canadian territory to persons who are criminals or security risks.

The power to detain permanent residents and foreign nationals meets these objectives by:

- protecting Canadian society by detaining those who pose a danger to the public or security risk
- supporting the removal of those who have been denied access to Canadian territory including those who are criminals, security risks, or inadmissible for crimes against humanity; and
- supporting the examination and investigation processes, which are key elements in ensuring the enforcement of IRPA.

4. The act and regulations

4.1. Authority to detain a person

The following sections identify the grounds on which an officer may arrest and detain a permanent resident or foreign national. For further information on arrest procedures, please see ENF 7, Investigations and Arrests.

For information about	Section of IRPA
Arrest and detention with warrant An officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national who the officer has reasonable grounds to believe is inadmissible and:	A55(1)

• is a danger to the public; or • is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2).	

Arrest and detention without warrant
 	
An officer may, without a warrant, arrest and detain a foreign national, other than a protected person,
 	
• who the officer has reasonable grounds to believe is inadmissible; and
  ○ is a danger to the public; or
  ○ is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or
• if the officer is not satisfied as to the identity of the foreign national in the course of any procedure under IRPA.
	A55(2)

Detention on entry
 	
A permanent resident or a foreign national may, on entry into Canada, be detained if an officer
 	
• considers it necessary to do so in order for the examination to be completed; or
• has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of
  ○ security,
  ○ violating human or international rights,
  ○ serious criminality,
  ○ criminality or
  ○ organized criminality.
	A55(3)

Mandatory arrest and detention — designated foreign national If a designation is made under subsection A20.1(1), an officer must • detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation; or • arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation.	A55(3.1)
Notice to the Immigration Division	A55(4)

If a permanent resident or a foreign national is taken into detention, an officer shall without delay give notice to the Immigration Division.	
Release: officer An officer may order the release from detention of a permanent resident or a foreign national before the first detention review by the Immigration Division if the officer is of the opinion that the reasons for the detention no longer exist. The officer may impose any conditions, including the payment of a deposit or the posting of a guarantee for compliance with the conditions, that the officer considers necessary.	A56(1)
Minor children It is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.	A60
Ministers' warrant The Minister and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.	A81

4.2. Regulatory factors and conditions

Regulations on detention and release have been developed under section A61. Part 14 of IRPR is constructed as follows:

Factors that shall be considered	R244
Factors: Flight risk	R245
Factors: Danger to the public	R246
Factors: Identity not established	R247
Other factors If it is determined that there are grounds for detention, the following factors shall be considered before a decision is made on detention or release: • the reason for detention; • the length of time in detention; • whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;	R248

• any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned; and • the existence of alternatives to detention (ATDs).	
Best interests of the child For the purpose of paragraph 248(f) and for the application, in respect of children who are under 18 years of age, of the principle affirmed in section A60, that a minor child shall be detained only as a measure of last resort, the following factors must be considered when determining the best interests of the child: • the child's physical, emotional and psychological well-being; • the child's healthcare and educational needs; • the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability; • the care, protection and safety needs of the child; and • the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity. Marginal note: Degree of dependence For the purpose of paragraph 248(f), the level of dependency of the child on the person there are grounds to detain shall also be considered when determining the best interests of the child.	R248.1
Special considerations for minor children For the application of the principle affirmed in section A60 that a minor child shall be detained only as a measure of last resort, the special considerations that apply in relation to the detention of minor children who are less than 18 years of age are • the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children; • the anticipated length of detention; • the risk of continued control by the human smugglers or traffickers who brought the children to Canada; • the type of detention facility envisaged and the conditions of detention; • the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and • the availability of services in the detention facility, including education, counselling and recreation.	R249
Applications for travel documents	R250

Inadmissibility on grounds of security — conditions	R250.1

4.3. Forms and publications

Several forms require the gender identity of detainees to ensure their safety and well-being. Detention forms will progressively be updated to reflect all available gender identities as follows: male, female and another gender. Another gender is mainly being used for individuals with a passport or other travel document with the "X" designation. In addition, transgender, queer and two-spirit individuals may also select another gender.

All relevant detention forms and publications may be filled out and signed electronically (if available). They are shown in the following table:

Form title	**Form number**
Order for Detention	BSF304
Detention Cell Log and Instructions	BSF481
Detention Notes	BSF508
Minister's Opinion Regarding the Foreign National's Identity (under subsection 58(1)(d) of the *Immigration and Refugee Protection Act*)	BSF510
Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules	BSF524
Authority to Release from Detention	BSF566
Detention (stickers)	BSF578
Detainee Medical Needs	BSF674
Request for Release from Mandatory Detention – Exceptional Circumstances (pursuant to paragraph 58.1(1) of the *Immigration and Refugee Protection Act*)	BSF735
National Risk Assessment for Detention	BSF754
Notice of Rights Conferred by the *Canadian Charter of Rights and Freedoms* and by the Vienna Convention Following Section 55 of the *Immigration and Refugee Protection Act* Arrest or Detention	BSF776
Information for people detained under the *Immigration and Refugee Protection Act* (brochure)	BSF5012 • English • French • Arabic • Chinese Simplified • Chinese Traditional

	• Hindi • Japanese • Korean • Farsi • Portuguese • Punjabi • Russian • Spanish • Tagalog • Tamil • Urdu
Acknowledgement of Conditions – Immigration and Refugee Protection Act (IRPA)	BSF821

5. Instruments and delegations

IRPA provides officers with the discretionary authority or power to arrest and detain under section A55. Section A56 designates to officers the authority, prior to the first detention review, to release a person from detention if, in their opinion, the reasons for detention no longer exist.

Officers at ports of entry and enforcement officers working within inland offices may exercise this power. The CBSA Designation of Officers and Delegation of Authority document can be found in IL 3.

6. Departmental policy

The Minister of Immigration, Refugees and Citizenship is responsible for the administration of IRPA with the exception of the areas for which the Minister of Public Safety has assumed responsibility as described below (subsection A4(2)).

The Minister of Public Safety is responsible for the administration of the Act as it relates to the following:

- examinations at ports of entry;
- the enforcement of IRPA, including arrest, detention and removal;
- the establishment of policies respecting the enforcement of IRPA and inadmissibility on grounds of security, organized criminality or violating human or international rights; or
- determinations under subsections A34(2), A35(2) and A37(2).

6.1. Principles

The CBSA is guided by the following principles governing the treatment of persons detained under IRPA:

- immigration detention is an administrative detention and must not be punitive in nature;
- persons detained under IRPA are treated with dignity and respect at all times;
- persons are detained in an environment that is safe and secure;
- persons are treated in a manner that is commensurate with the level of risk they pose to public safety or the integrity of the immigration program;
- persons are duly and appropriately considered for ATD throughout the detention continuum, which includes before every detention review;
- detention operations are conducted in a transparent manner, while respecting the privacy of the detained persons;
- a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child;
- people who are detained are informed of their legal rights, are given an opportunity to exercise their rights and are informed of the status of their case;
- feedback is welcomed by the CBSA and all detainees have access to a feedback process;
- for Immigration Holding Centres (IHC), the CBSA maintains national detention standards that incorporate international standards;
- monitoring of the CBSA's compliance with these standards will be conducted regularly by an external agency;
- in CBSA IHCs, the CBSA makes reasonable efforts to meet the physical, emotional and spiritual needs of detained persons in a way that is culturally appropriate.

6.2. General

The CBSA recognizes that to deny individuals their liberty is a decision that requires a sensitive and balanced assessment of risk. In exercising their discretionary authority to detain, officers must consider ATD, individual assessment of the case and the impact of release. Additionally, it requires a risk management approach that supports decision making within the context of the following priorities:

- where safety or security concerns are identified (including criminality, terrorism or violent behaviour);
- to support removal where removal is imminent and where a flight risk has been identified;
- where there are significant concerns regarding a person's identity including multiple identity documents, false documents, lack of travel documents or non-cooperation in assisting an officer to establish their identity.

6.3. Grounds for detention

Within Canadian territory and under the authority of subsection A55(1), an officer may issue a warrant for the arrest and detention of a permanent resident or a foreign national,

- who the officer has reasonable grounds to believe is inadmissible and:
    - is a danger to the public; or (see section 6.4)
    - is unlikely to appear for examination, for an admissibility hearing, for removal from Canada or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2). (see section 6.5)

Within Canadian territory and under the authority of subsection A55(2), an officer may, without a warrant, arrest and detain a foreign national, other than a protected person (the term protected person is defined in subsection A95(2)),

- who the officer has reasonable grounds to believe is inadmissible; and
  - is a danger to the public; or (see section 6.4)
  - is unlikely to appear for examination, an admissibility hearing, removal from Canada, or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2); or (see section 6.5)
- the officer is not satisfied as to the identity of the foreign national in the course of any procedure under IRPA. (see section 6.6)

On entry into Canada under the authority of subsection A55(3), an officer may detain a permanent resident or a foreign national where:

- the officer considers it necessary to do so in order for the examination to be completed; or (see section 6.7)
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality. (see section 6.8)

Under the authority of subsection A55(3.1), if a designation is made under subsection A20.1(1):

- the officer must detain, on their entry into Canada, a foreign national who, as a result of the designation, is a designated foreign national and who is 16 years of age or older on the day of the arrival that is the subject of the designation (see section 6.9); or
- the officer must arrest and detain without a warrant — or issue a warrant for the arrest and detention of — a foreign national who, after their entry into Canada, becomes a designated foreign national as a result of the designation and who was 16 years of age or older on the day of the arrival that is the subject of the designation. (see section 6.9)

Under section A81, the Minister of Public Safety and Emergency Preparedness and the Minister of Citizenship and Immigration may issue a warrant for the arrest and detention of a person who is named in a certificate if:

- they have reasonable grounds to believe that the person is a danger to national security or to the safety of any person or is unlikely to appear at a proceeding or for removal.

6.4. Factors: danger to the public

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is a danger to the public, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see ENF 34, Alternatives to Detention).

Prescribed factors

Section R246 outlines the following factors that must be considered in assessing danger to the public:

a. the fact that the person constitutes, in the opinion of the Minister of Immigration, Refugees and Citizenship, a danger to the public in Canada or a danger to the security of Canada under paragraph A101(2)(b), subparagraph A113(d)(i) or (ii) or paragraph A115(2)(a) or (b);
b. association with a criminal organization within the meaning of subsection A121.1(1);
c. engagement in people smuggling or trafficking in persons;
d. conviction in Canada under an Act of Parliament for
    i. a sexual offence, or
    ii. an offence involving violence or weapons;
e. conviction for an offence in Canada under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
    i. section 5 (trafficking),
    ii. section 6 (importing and exporting), and
    iii. section 7 (production);
f. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under an Act of Parliament for
    i. a sexual offence, or
    ii. an offence involving violence or weapons; and
g. conviction outside Canada, or the existence of pending charges outside Canada, for an offence that, if committed in Canada, would constitute an offence under any of the following provisions of the *Controlled Drugs and Substances Act*, namely,
    i. section 5 (trafficking)
    ii. section 6 (importing and exporting), and
    iii. section 7 (production).

Criminal convictions

A criminal record does not necessarily mean that the individual is a threat. For example, a person who was convicted of a criminal offence and has not committed any further offences since that time might not be a danger to the public. Various factors must be weighed, such as the nature of the offences, the circumstances in which they were committed, the punishment imposed, the period of time elapsed since the offence, violent behaviour, the possibility of recidivism, and the possible consequences of releasing the person. Assessment reports by correctional services and by police may be a relevant source of information. It must be established why the presence of one or more of these factors demonstrates that the person is a danger to the public. Facts or the criminal profile should clearly outline why the individual is a danger to the public.

For information regarding persons serving a criminal sentence in a provincial or federal correctional facility, see ENF 22, Persons serving a sentence.

Committing an offence in Canada

Being charged with committing an offence in Canada (i.e. a pending charge without conviction in Canada) is not listed as an inadmissibility. Although this is an important fact, unless an officer relies on additional factors or detention grounds, an individual should not be detained for danger to the public solely because they have been charged with an offence in Canada. Indeed, the presumption of innocence is a principle where each individual is considered innocent unless proven guilty. In addition, prior to their release from criminal hold, individuals who have been charged with an offence in Canada must satisfy a judicial tribunal that they can be out on bail (e.g. based on the accused's criminal record, the seriousness of the

charges, protection of the public or the alleged victim, and the likelihood that the accused might commit further offences if released).

Other factors to consider

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. IRPA provides to officers and members of the Immigration Division the authority to consider all other circumstances pertaining to the case. The following are additional factors that may be relevant:

- history of violent or threatening behaviour demonstrated by the person;
- violent incidents or major breaches of a detention facility rules while in detention;
- statements, letters, photos or publication in social media of their intent to commit a violent crime;
- availability of ATD and whether sufficient to mitigate the danger to the public risk;
- suspected or known untreated addictions or mental illness linked to a violent behaviour; and
- pattern of criminal behaviour.

Mental health

There may be reasonable grounds for thinking that an individual suffering from an untreated mental illness is a danger to the public (for example, unstable violent behaviour toward an officer during interaction). Instability of the person associated with mental imbalance at the time of the interview may be an important indicator in the assessment of the danger, and may point to future violent behaviour. Following the detainee's transfer to a detention facility, healthcare professionals will be able to provide assistance and to indicate what action should be taken in this type of case. If the mental illness is under control but requires medication upon release, consideration should be given to the accessibility of such medication to the detainee.

See section 6.14 for more detail on long-term detention and jurisprudence.

6.5. Factors: unlikely to appear (flight risk)

Where the officer assesses that an individual is inadmissible and there are reasonable grounds to believe the individual is unlikely to appear for an examination, an admissibility hearing, removal or at a proceeding that could lead to the making of a removal order by the Minister under subsection A44(2), detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see ENF 34, Alternatives to Detention).

Prescribed factors

Section R245 outlines the factors to be taken into account when assessing flight risk:

a. being a fugitive from justice in a foreign jurisdiction in relation to an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;
b. voluntary compliance with any previous departure order;
c. voluntary compliance with any previously required appearance at an immigration or criminal proceeding;
d. previous compliance with any conditions imposed in respect of entry, release or a stay of removal;

e. any previous avoidance of examination or escape from custody, or any previous attempt to do so;
f. involvement with a people-smuggling or trafficking-in-persons operation that would likely lead the person to not appear for a measure referred to in paragraph R244(a) or to be vulnerable to being influenced or coerced by an organization involved in such an operation to not appear for such a measure; and
g. the existence of strong ties to a community in Canada.

Other factors to consider

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. The Act provides both officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual's case. The following are additional factors that may also be present and relevant:

- no fixed place of residence or attachment in Canada;
- removal is imminent;
- presence of relatives or friends in Canada who can exert influence over the individual, who are prepared to provide a guarantee or surety;
- the individual's cooperation with the authorities to obtain a travel document (for removal);
- availability of ATD and whether sufficient to mitigate the unlikely to appear risk; and
- suspected or known untreated mental illness causing disorientation or confusion.

The mere presence of any of the above factors should not automatically lead to detention. The factors must be considered in the context of all the circumstances in the case. For example, the person may be indigent; however, this does not constitute proof that the person will not appear. Much would depend on the officer's global assessment of the behaviour of the individual as demonstrated during the interview as well as all other circumstances of the case.

It is essential that officers are aware that the unlikeliness to appear may change as the various immigration processes unfold. For example, an individual claiming refugee protection may not be unlikely to appear at the time of the initial claim but may become unlikely to appear on the issuance of a negative determination by the Immigration and Refugee Board (IRB). Similarly a person appealing their removal order may not be unlikely to appear while that matter is being reviewed but may become unlikely to appear following a negative decision.

Delays in removal process

Officers may encounter situations where a person is unlikely to appear for removal but the removal is not imminent or the date is unknown due to factors outside the control of the individual (e.g. stay of removal, lack of cooperation of a foreign government to deliver a travel document, lengthy appeal process). In these situations, unless officers rely on other detention grounds, officers should give additional weight to the use of ATD so as to avoid potentially lengthy detention while removal arrangements are being worked out.

However, if the removal has been delayed due to the individual's lack of cooperation (e.g. refusal to sign a travel document application or to attend an appointment with a foreign mission), then the detention may be maintained. A lack of cooperation on the part of the individual must be noted on the file. See section 6.14 for more detail on long-term detention and jurisprudence.

6.6. Factors: identity not established

Where the officer is not satisfied as to the identity of the foreign national, other than a protected person, in the course of any procedure under this Act, detention may be warranted if the risk the person poses cannot be mitigated through an alternative to detention (see ENF 34, Alternatives to Detention).

"Any procedure" refers to any process with regard to a person's application or status, whether initiated by the person or by IRCC or the CBSA, that has arisen in the normal course of the immigration system. The procedures under IRPA include examinations, refugee claims, Ministerial determinations, admissibility hearings, etc. An investigation is not a procedure.

Prescribed factors

Subsection R247(1) outlines the factors to be taken into account when assessing identity risk:

a. the foreign national's cooperation in providing evidence of their identity or assisting the officers in obtaining evidence of their identity, in providing the date and place of their birth and the names of their mother and father, in providing detailed information on the itinerary they followed in travelling to Canada or in completing an application for a travel document;
b. in the case of a foreign national who makes a claim for refugee protection, the possibility of obtaining identity documents or information without divulging personal information to government officials of their country of nationality or, if there is no country of nationality, their country of former habitual residence;
c. the destruction of identity or travel documents or the use of fraudulent documents in order to mislead officers, and the circumstances under which the foreign national took those actions;
d. the provision of contradictory information with respect to identity at the time of an application to the CBSA or IRCC; and
e. the existence of documents that contradict information provided by the foreign national with respect to their identity.

Minor children

Subsection R247(2) directs that a minor child's failure to cooperate in providing evidence of their identity or assisting must not have a negative impact on the assessment of the case (that is, non-cooperation in itself should not lead to a detention decision). Identification efforts must be actively pursued and expedited.

Other factors to consider

The above factors outlined in IRPR provide a non-exhaustive list for the decision maker to consider. IRPA provides officers and members of the Immigration Division with the authority to consider all other circumstances pertaining to the individual's case. The following are additional factors that may be present and relevant:

- whether the person is credible;
- whether differences in identities (names) provided resulted from language differences or interpretation difficulties;
- the result of a linguistics assessment;

- whether the person accepts to be interviewed by the embassy of the country of which the officer thinks the person is a citizen (does not apply to asylum seekers with a pending claim at the IRB);
- the officer's opinion that the identity of the foreign national may be established; and
- the officer's efforts to establish the identity of the foreign national.

Detention for identity may be considered where the officer is not satisfied as to the person's identity and identity issues need to be resolved for safety, security or inadmissibility concerns to be addressed to the satisfaction of the officer. This includes, but is not limited to, multiple identity documents, fraudulent documents, a lack of documents, a lack of credibility and non-cooperation to establish identity.

Cooperation to establish identity

The officer must inform the detainee and their counsel that they can assist with the identification process by providing complete information and by personally attempting to obtain documentary evidence from their country of origin.

Officers may encounter situations where a person has cooperated with the CBSA by providing relevant information, but their identity has not been established due to factors outside their control (e.g. lack of cooperation of a foreign government in delivering a travel document, ongoing civil war in the country of origin). In these situations where officers have reached an impasse, unless officers rely on other detention grounds, officers should give additional weight to the use of ATD so as to avoid potentially lengthy detention while identification procedures continue.

However, if a person's identity has not been established due to their lack of cooperation (e.g. refusal to sign a travel document application or to attend an appointment for a linguistic assessment), then the detention may be justifiably maintained. A lack of cooperation on the part of the individual must be noted in the detention notes. See section 6.14 for more detail on long-term detention and jurisprudence.

Evidence of research into identity

Given paragraph A58(1)(d), the Minister is required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time. Officers responsible for the identity investigation must follow each case closely and document any efforts made to establish the person's identity. Any actions undertaken or external delay shall be noted (e.g. phone calls to person's relatives). At the detention review, evidence must be provided to the Immigration Division that the Minister is taking the necessary steps to establish the identity of the person. Some situations will require inquiries with national (e.g. National Document Centre, liaison officers, IRCC, the Royal Canadian Mounted Police [RCMP]) and international enforcement agencies (e.g. foreign governments), which may take time. Officers must demonstrate they have worked diligently to obtain the missing evidence (e.g. fingerprint results).

6.7. Factors: detention on entry to complete the examination

The power of officers to detain "on entry into Canada" in order for the examination to be completed (paragraph A55(3)(a)) may only be exercised at a port of entry. The detaining officer has to justify their attempts to complete the examination and state when the examination is expected to resume and to be completed. The detaining officer has the responsibility to resume the examination upon the detainee's return to the port of entry, unless other arrangements have been made with another port or entry or inland

enforcement office. Officers should attempt to complete the examination of an individual, and if an officer is unavailable, the case should be assigned to another available officer to fully assess and complete the examination. Officers can detain a foreign national in order for the examination to be completed if their other options for dealing with incomplete examinations (e.g. direct back [section R41], entry to complete examination [section A23], deposit [section R45]) are not available or cannot mitigate the risk. For more information on options for dealing with inadmissibility and incomplete examinations, see ENF 4, Port of Entry Examinations.

Here are some situations where detention to complete the examination may be justified for foreign nationals seeking temporary resident status:

- An inadmissible foreign national wishes to withdraw his application at a port of entry (airport) late in the evening. The foreign national is unable to leave the port of entry because the last returning flight has already left and no other returning flight is available for the next two days. The officer believes that if the foreign national remains in Canada, he will pose a danger to the public. The officer has considered other options for dealing with incomplete examinations and ATD; however, none of them can mitigate the risk or is available at that time of day. The officer decides to detain the foreign national until the next return flight is available. Later, the foreign national is brought back to the port of entry and released before the first detention review. The return flight is now available, and the officer completes the examination by allowing the foreign national to withdraw his application.
- A foreign national requests admission at a port of entry (airport) late in the evening. The officer has reasonable grounds to suspect that her Canadian visa may have been improperly obtained, and an interview is necessary to confirm her doubts. Despite multiple attempts, the officer is unable to obtain the services of an interpreter to communicate with the traveller, and local airport policies prohibit travellers from staying overnight at that airport. The officer believes that if the foreign national remains in Canada, she is unlikely appear for the examination. The officer has considered other options for dealing with incomplete examinations and ATD; however, none of them can mitigate the risk or is available at that time of day. The officer decides to detain the foreign national until the next day. The next morning, the foreign national is brought back to the port of entry and released before the first detention review. The officer has reached an interpreter and the examination resumes. Following the interview, the officer is satisfied that the Canadian visa was properly delivered and the foreign national is authorized to enter Canada.

Permanent residents

Officers must remain cognizant of the fact that subsection A19(2) gives permanent residents of Canada the right to enter Canada at a port of entry once it is established that a person is a permanent resident, regardless of non-compliance with the residency obligation in section A28 or the presence of another inadmissibility. While permanent residents seeking entry into Canada may be detained, officers at ports of entry should not detain a permanent resident solely in order for the examination to be completed. See section 6.8 below, which outlines procedures for when a permanent resident is suspected to be inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.

Urgent medical treatment

When a person requires urgent medical treatment, the transport of the person by ambulance to a hospital should not be delayed because of an administrative process. At ports of entry, officers should not detain a

person requiring urgent medical treatment in order for the examination to be completed, unless their other options for dealing with incomplete examinations cannot mitigate the risk. For example, an entry to complete examination under section A23, the seizure of the travel documents and the name of the hospital may be sufficient to handle most cases. Therefore, there is no need to escort the client to the hospital as the person is not detained. Once the person has recovered from their urgent health condition, they will be able to return to the CBSA office to resume the examination. For more information on incomplete examinations, see ENF 4, Port of Entry Examinations.

Moreover, officers must not detain a person for the sole purpose of issuing them Interim Federal Health Program (IFHP) coverage to cover the healthcare expenses. Healthcare expenses of people who are not eligible for the IFHP must be assumed by the person concerned and/or their public or private health insurance. For more information on the IFHP, see IR 10, Interim Federal Health Program.

6.8. Factors: detention on entry for suspected inadmissibility on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality

The power of officers to detain "on entry into Canada" may only be exercised at a port of entry where the officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality (paragraph A55(3)(b)), and it should never be used solely for administrative convenience.

The standard of proof set under paragraph A55(3)(b), reasonable grounds to suspect, is lower than reasonable grounds to believe, which allows officers to arrest and detain with or without warrant under sections A55(1) and A55(2). If enough evidence is gathered to confirm the inadmissibility, the grounds for detention and the detention notes should be updated.

Evidence of research into inadmissibility

The purpose is to enable officers to obtain further relevant documents, information or other evidence to determine individual admissibility. The officer shall pursue their research to establish whether the person is inadmissible during the period of detention. Any actions undertaken, external delay and awaiting results must be noted. At the detention review, evidence must be provided to the Immigration Division that the Minister is taking the necessary steps to inquire into the reasonable suspicion that the permanent resident or foreign national is inadmissible on grounds listed above. Some situations will require inquiries with national (e.g. National Security Screening Division, liaison officers, IRCC, the RCMP or Canadian Security Intelligence Service [CSIS]) and international enforcement agencies (e.g. Interpol), which may take time. Officers must demonstrate they have worked diligently to obtain the missing evidence (e.g. criminal convictions, intelligence information or lookouts). For more information regarding the evidence required to find a person inadmissible as described in these sections, see ENF 1, Inadmissibility.

Originating office

If an officer has reasonable grounds to suspect that the permanent resident or the foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality, the officer should write it in their detention notes regardless of whether the

detention began at a port of entry or in Canada, as they may be used for the detention review. Indeed, an individual who has initially been detained on specific grounds such as danger to the public, unlikely to appear, or identity not established, can subsequently have their detention continued on the basis that the Minister is taking necessary steps to inquire into a reasonable suspicion that they are inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality (A58(1)(c)).

6.9. Factors: mandatory arrest and detention of designated foreign national

Under paragraph A55(3.1)(a) or (b), if a designation is made by the Minister under subsection A20.1(1), an officer must detain, arrest or issue a warrant for the arrest and detention of a designated foreign national (DFN) who is or was 16 years of age or older on the day of the arrival that is the subject of the designation.

Subsection A20.1(1) stipulates that the Minister may, by order, having regard to the public interest, designate as an irregular arrival the arrival in Canada of a group of persons if he or she:

1. is of the opinion that examinations of the persons in the group, particularly for the purpose of establishing identity or determining inadmissibility – and any investigations concerning persons in the group – cannot be conducted in a timely manner, or
2. has reasonable grounds to suspect that, in relation to the arrival in Canada of the group, there has been, or will be, a contravention of subsection A117(1) for profit, or for the benefit of, at the direction of or in association with a criminal organization or terrorist group.

When a designation is made, a foreign national who is part of the group whose arrival is the subject of the designation becomes a DFN. DFNs are subject to mandatory arrest and detention and a revised detention review timeline of within 14 days and then every six months thereafter. The CBSA must arrest and detain all DFNs who were 16 years of age or older at the time of the arrival, where the designated irregular arrival occurred on or after June 28, 2012.

Mandatory detention does not apply to DFNs who are 15 years of age or younger on the day of arrival.

For more information, consult the Designated Irregular Arrivals Standard Operating Procedures.

6.10. Other regulatory factors and best interests of the directly affected child

Prescribed factors

Section R248 outlines the factors the officer or the Immigration Division shall consider before making a decision on detention or release:

a. the reason for detention;
b. the length of time in detention;
c. whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;

d. any unexplained delays or unexplained lack of diligence caused by the CBSA or the person concerned;
e. the existence of alternatives to detention; and
f. the best interests of a directly affected child who is under 18 years of age (for more information, see the section below).

Various ATDs are available, and officers must consider them prior to detention and while the individual remains in detention. Officers should consider the individual's immigration history and potential risk against the maximum risk that can be mitigated through each ATD. Of note remains the fact that accessibility to ATDs may differ between ports of entry and inland enforcement offices. The availability of ATDs may be impacted by the time or day of the arrest as some of them require involvement from third parties (e.g. guarantor and service provider). For more information on the ATD Program, see ENF 34, Alternatives to Detention.

Should an ATD have been considered appropriate but not have been accessible or available at the time of the detention (e.g. a potential guarantor was identified but they could not appear at the office, a bed in a mandatory residency facility is not available), it should be included in the detention notes because hearings officers may make an application for an early detention review if continued detention is no longer justified.

Best interests of a directly affected child

Subsection R248(f) requires that the best interests of a directly affected child who is under 18 years of age shall be considered before a decision is made on detention or release. There is no limitation regarding the directly affected child's location (i.e. in Canada or abroad) or whether the minor is detained, housed or released. However, subsection R248.1(2) stipulates that the level of dependence of the child on the person there are grounds to detain shall be considered when determining the best interests of the child. To assess the best interests of a directly affected child or the best interests of the child when the child is detained, subsection R248.1(1) provides a non-exhaustive list of factors that officers and Immigration Division members must consider:

a. the child's physical, emotional and psychological well-being;
b. the child's healthcare and educational needs;
c. the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability;
d. the care, protection and safety needs of the child; and
e. the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity.

6.11. Detention of minor children (under 18 years of age)

A minor child may be detained if grounds for detention exist under section A55. It is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account other applicable criteria including the best interests of the child (BIOC) (section A60). However, additional precautions exist and more factors have to be taken into consideration. For appearances before the IRB, subsection A167(2) provides that a representative shall be designated for any person who is under 18 years of age or who, in the opinion of the Division, is unable to understand the nature of the proceedings.

For more information on detention review, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

Prescribed factors

Section R249 identifies the special considerations that apply in relation to the detention of minor children under 18 years of age. These considerations are described as follows:

a. the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children;
b. the anticipated length of detention;
c. the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
d. the type of detention facility envisaged and the conditions of detention;
e. the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained minor children; and
f. the availability of services in the detention facility, including education, counselling and recreation.

For complete information on the detention of a minor, see Annex B, National Directive for the Detention or Housing of Minors.

6.12. Housing of minor children (under 18 years of age)

A housed minor is a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC assessment, is kept with their detained parent(s) or legal guardian(s) at an IHC at the latter's request.

A housed minor is not subject to an Order for Detention and is free to remain in and re-enter the IHC subject to consent of the parent(s) or legal guardian(s) in accordance with the rules and procedures of that facility. No detention-related forms should be issued for a housed minor as they are not detained. This includes the Detainee Medical Needs, as these forms are only issued where the IRPA grounds for detention of the minor are met. However, tracking of housed minors in the National Case Management System (NCMS) is required. See section 9.1, Data entry, for more details.

For complete information on the housing of a minor, see Annex B, National Directive for the Detention or Housing of Minors.

6.13. Vulnerable persons

A vulnerable person in the detention context is defined as a person for whom detention may cause a particular hardship. Vulnerable persons must clearly be identified on the National Risk Assessment for Detention (NRAD) form (see section 9.5). For persons falling into one or more of these categories, officers should apply the principle that where there is no danger to the public, detention is to be avoided. Detention of a vulnerable person is not precluded where the individual is considered a danger to the public. However, it should be for the shortest period of time and should be focused on supporting imminent removal. Vulnerable persons are:

- pregnant women and nursing mothers;
- minors (under 18 years of age) (see section 6.11, Detention of minor children);
- persons suffering from a severe medical condition or disability (see note 1 below);
- persons suffering from restricted mobility (see note 1 below);
- persons with a suspected or known mental illness (includes suicidal and self-harmful persons); and
- victims of human trafficking (see note 2 below).

Note 1: To assess if a person's medical condition, disability or restricted mobility is severe enough to cause a particular hardship, the officer must take into account the detention facility and available services. The officer must believe that the person cannot be properly managed within the detention facility in comparison with another detainee without the vulnerability (for instance, a person requires a walker but the detention facility does not offer this kind of service). When in doubt that a person can be satisfactorily managed within a detention facility, officers should make a decision in consultation with an officer who works at an IHC, a detention liaison officer (DLO) or a designated regional representative.

Note 2: Victims or suspected victims of human trafficking should never be kept or be in contact with their trafficker, if known.

6.14. Long-term detention and jurisprudence

The CBSA considers all detentions that have lasted over 99 days to be long-term detentions. As is done for each detention, officers should actively determine if ATDs could be available or suitable to mitigate the risk. In cases of long-term detention, officers should carefully document each effort or progress that has been made to reach an immigration purpose (e.g. to establish the identity or to remove an individual). A detention must come to an end if it no longer serves an immigration purpose. Pursuant to paragraph A58(1)(d), the Minister's representative is required to demonstrate the possibility of establishing the identity of the person concerned within a reasonable period of time to justify continued detention on such grounds. Officers responsible for the identity investigation must follow each case closely and document any efforts made to establish the person's identity. This will demonstrate that the CBSA is making progress and that the individual's detention is not indefinite. Long-term detentions are more justifiable where one of the following situations occurs:

- the detained individual is a danger to the public;
- ATDs and conditions cannot sufficiently mitigate the danger to the public or the unlikeliness to appear; or
- delays can be attributed primarily to the detainee, as a result of their refusal to cooperate with the CBSA in achieving the applicable enforcement outcome.

Jurisprudence

In Sahin v. Canada (Minister of Citizenship and Immigration), [1995] 1 FC 214, the Federal Court ruled that persons cannot be held indefinitely under the provisions of the *Immigration Act*. There has to be an end to the process in view. This ruling has been quoted several times in several judgements, even though it refers to the former *Immigration Act*. In this case, the reason for detention was that, in the opinion of the adjudicator, the subject would not report for removal if required to do so. The Court's decision in this case set out a four-part test regarding detention. These four factors have been integrated into section R248.

- The first is that there is a stronger case for justifying a longer detention for someone considered a danger to the public.
- The second concerns the length of future detention: if it cannot be ascertained, the facts would favour release.
- The third is a question of who is responsible for any delay: unexplained delay or even unexplained lack of diligence should count against the offending party.
- The fourth is the availability, effectiveness and appropriateness of ATDs such as outright release, bail bond and periodic reporting.

In Lunyamila v. Canada (Public Safety and Emergency Preparedness), 2016 FC 1199, the Federal Court ruled that persons who are a danger to the public or a flight risk and who are not cooperating with the Minister's efforts to remove them from Canada must continue to be detained until such time as they cooperate with their removal, except in exceptional circumstances. However, release might be justified in an exceptional circumstance, such as when there have been unexplained and very substantial delays by the Minister that are not attributable to the detained person's lack of cooperation or to an unwillingness on the part of the Minister to incur substantial costs that would be associated with pursuing non-speculative possibilities for removal. Where a person is a danger to the public, the greater the risk that the public would be required to assume under a particular alternative to detention, the more this factor should weigh in favour of continued detention.

In Canada (Public Safety and Emergency Preparedness) v. Ismail, [2015] 3 FCR 53, 2014 FC 390, the Federal Court determined that there is nothing in subsection A58(1) that ties the ability of the Immigration Division to continue to detain an individual under that provision to the original grounds of detention under section A55. It is thus apparent on the face of the legislation that an individual may originally be detained by an officer for one reason, on the basis of one standard, but may later be denied release by the Immigration Division on a different ground, and on the basis of a different standard.

7. Detention facilities

In the administration of the immigration detention program, the CBSA uses multiple detention facilities to detain individuals under the IRPA. The placement in and transfer of detainees to a detention facility are guided by their NRAD score, factors of their case and location. Under section A142, CBSA officers may direct certain individuals to detain a permanent resident or a foreign national on behalf of the CBSA. Moreover, section A143 provides that these individuals have the authority to detain a person with respect to whom an order to detain is made on behalf of the CBSA [BSF304]. These provisions read as follows:

> A142 Every peace officer and every person in immediate charge or control of an immigrant station shall, when so directed by an officer, execute any warrant or written order issued under this Act for the arrest, detention or removal from Canada of any permanent resident or foreign national.
>
> A143 A warrant issued or an order to detain made under this Act is, notwithstanding any other law, sufficient authority to the person to whom it is addressed or who may receive and execute it to arrest and detain the person with respect to whom the warrant or order was issued or made.

Immigration holding centres

The IHC should always be the default detention facility if risk can be mitigated, in regions where those facilities are available. Individuals detained under the IRPA who have scored 0 to 4 points and 5 to 9 points (if risk can be mitigated in an IHC) on the NRAD form [BSF754] should be held in an IHC. The CBSA operates four regional IHCs:

- The Laval IHC has a maximum capacity of 144 detainees. It is located at 200 Montée St-François, Laval, QC H7C 1S5. Laval IHC serves the following regions: Quebec, Atlantic and Northern Ontario (Cornwall and Ottawa exclusively).
- The Toronto IHC has a maximum capacity of 195 detainees. It is located at 385 Rexdale Blvd, Toronto, ON M9W 1R9, near the Pearson International Airport. Toronto IHC serves the following regions: Greater Toronto Area, Southern Ontario and Northern Ontario (except Cornwall and Ottawa).
- The Vancouver IHC has a maximum capacity of 24 detainees. It is located at #113, 5000 Miller Road, Richmond, BC V7B 1K6, inside the Vancouver International Airport. This facility is only for short stays of up to 48 hours, and it serves the Pacific Region. It will be replaced by the Surrey IHC.
- The Surrey IHC is being constructed, and it will have a maximum capacity of 73 detainees. It will be located at 13130 76th Avenue, Surrey, BC V3W 2V6. Surrey IHC will serve the following regions: Pacific and Prairies.

Provincial correctional facilities

Provincial correctional facilities are used in regions where placement in an IHC is not available. This includes individuals detained over 48 hours in the Pacific Region until the construction of the Surrey IHC has been completed.

In addition, individuals detained under IRPA who have a total score of 5 to 9 points (if risk cannot be mitigated in an IHC) and 10 points and more on the NRAD form [BSF754] should be held in a provincial correctional facility.

The CBSA has several arrangements and bilateral agreements with provincial governments to allow the use of provincial correctional facilities by CBSA detainees. Currently, the CBSA has bilateral agreements with the following provinces for the purpose of immigration detention: Alberta (2006), Ontario (2015), Quebec (2017) and British Columbia (2017).

Police stations

In some regions, detainees are detained at police stations or local RCMP detachments for a few days or less until being transferred to a provincial correctional facility or to CBSA custody. This is more common in isolated communities where no IHC or provincial correctional facility is in near proximity.

8. Detention program monitoring

The CBSA conducts internal reviews of its detention program. These reviews help ensure operational alignment with CBSA's national detention standards, adherence to national detention policies and directives, as well as consistency in officers' decisions, enabling effective management of the program and continual process improvement. In addition, the CBSA's detention program is monitored by other organizations. Their regular independent and unbiased reviews have been key in ensuring that reviews and recommendations are transparent, impartial and in the best interest of immigration detainees.

8.1. Canadian Red Cross

Since 1999, through arrangements with the federal government, the Canadian Red Cross (CRC) has been independently monitoring the CBSA's immigration detention program to ensure that persons detained pursuant to the IRPA are held and treated in accordance with applicable domestic standards and in compliance with international instruments to which Canada is a signatory. During this time, the CRC has conducted site visits to IHCs, provincial correctional facilities and other detention facilities across Canada and has provided important feedback and expert advice on policies and programs to the CBSA through their annual reports, detainee visits, communication and regular meetings.

In 2017, a contract was awarded to the CRC for the monitoring of Canada's immigration detention program to ensure that the CBSA's immigration detention program meets both national and international immigration detention standards. Under the contract, the CRC conducts ongoing site visits throughout the year, reports on its findings and provides recommendations to detention authorities to help improve the overall immigration environment for detainees. To this end, the CBSA collaborates with the CRC, and both parties have agreed to the following:

- The CBSA will provide the CRC unfettered access to all persons being held in detention facilities under the control and management of the CBSA. As required, the CBSA will escort the CRC and its resources into IHC facilities and areas where they will meet with immigration detainees to conduct their confidential meetings.
- In cases where the CRC is denied access to non-CBSA facilities, the CBSA region or Headquarters will endeavour, to the fullest extent possible and subject to any lawful limitations, to facilitate access to immigration detainees being held in detention facilities under the control and management of other federal, provincial, territorial or municipal authorities.
- Following the initial detention review by the IRB and after 48 hours, in accordance with the legislative and/or procedural protocols established by the CBSA, the CBSA will notify the CRC's established point(s) of contact of unaccompanied minors under the age of 18 being detained or housed in detention and/or persons who are unable to appreciate the nature of proceedings before the IRB.
- The CBSA will provide limited information regarding a detainee's case history (e.g. country of origin, gender, ethnicity, language of origin) as required by the CRC to effectively conduct monitoring visits with detainees and as relevant to assess detention operations. These data will not identify any individuals and are not considered personal information.
- The CBSA will notify the CRC when an emerging issue or incident occurs (e.g. hunger strike, allegation of abuse, death incident) so that the CRC may conduct a monitoring visit to ensure the well-being of other detainees and the health of the detention environment.

CBSA notification requests

- Unaccompanied minors: At first contact with an unaccompanied minor, CBSA regional management will notify the CRC in writing as soon as possible by sending an email message to IDMP@REDCROSS.CA. In the subject line, CBSA regional management is to indicate: "CBSA Notification Request: Unaccompanied Minors" and the facility or location where the minor is being held.
- Persons unable to appreciate IRB proceedings: CBSA regional management will follow the same communication protocol and send an email to the CRC generic email box with the following in the subject line: "CBSA Notification Request: Persons Unable to Appreciate IRB Proceedings".
- Emerging issues: Following the same communication protocol, CBSA regional management will also notify the CRC when an emerging issue or incident occurs such as a hunger strike, a protest, allegations of abuse, or lockdown.
- Death in custody: Following a death in custody, the CRC is not expected to intervene while the provincial authority undertakes its investigation. However, CBSA regional management will notify the CRC of the death in custody in order for the CRC to conduct a monitoring visit of immigration detainees held in the detention facility to ensure their continued well-being and a healthy detention environment following this incident.

8.2. United Nations High Commissioner for Refugees (UNHCR)

All CBSA facilities are subject to independent monitoring of detention standards by the UNHCR. Canada is a signatory to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Under article 35 of the Convention, Canada is required to cooperate with the UNHCR in the exercise of its functions and will, in particular, facilitate its duty of supervising the application of the provisions of this Convention. In order to enable the UNHCR to finalize performance management reports, Canada is required to provide the UNHCR thorough information and statistical data requested concerning the following:

- the condition of refugees;
- progress in implementing this Convention; and
- laws, regulations and decrees that are, or may be in the future, in force relating to refugees.

Refugee claimants should be able to contact and be contacted by the local UNHCR office.

9. Procedure: detention

Arrest

Under subsections A55(1) and (2), an officer may arrest and detain a person. For complete information on the procedures for arrest under the IRPA, see ENF 7, Investigations and Arrests, section 15.

Under subsection A55(3), an officer may detain a person on entry to Canada. This difference is due to the fact that the person is already within the CBSA's control and thus arrest is not necessary.

Detention

The following table contains the main tasks that must be completed to detain an individual under the IRPA.

Task	Responsibility and References	Uploaded to GCMS	Paper copies			
			Case file	Detainee or designated representative	Detention Facility	IRB
Ensure that the Notice of Rights Conferred by the Canadian Charter of Rights and Freedoms and by the Vienna Convention Following Section 55 Immigration and Refugee Protection Act Arrest or Detention [BSF776] has been completed.	Officer See ENF 7, Investigation and Arrests	X	X	X		
Use an accredited interpreter where a detainee does not understand one of Canada's official languages to ensure procedural fairness and fill out the Interpreter Declaration form [IMM1265B].	Officer See Using the services of an accredited interpreter		X			
Search the detainee for officer safety.	Officer See ENF 12, Search, Seizure, Fingerprinting and Photographing					
Photograph and fingerprint the detainee, if not already done during the arrest process.	Officer See ENF 12, Search, Seizure, Fingerprinting and Photographing		X			
Query the National Crime Information Center (NCIC), authorized usage: officer/public safety concerns. Query the Canadian Police Information Centre (CPIC).	Officer		X			
Give the detainee the brochure "Information for people detained under the Immigration and Refugee Protection Act" [BSF5012] and any other regional detention facility information.	Officer See section 4.3 to select one of the 16 languages available			X		
Conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes. Fill out Detention Cell Log and Instructions form [BSF481]. If a detainee is believed to be suicidal or self-harmful, constant visual or video monitoring is required.	Officer or contracted security guards See section 10, Care of detainees while in short-term detention rooms or cells	X	X			
Fill out the Detention Notes form [BSF508] and explain the case history, the applicable detention and release factors and the pursued enforcement objective. Explain how the best interests of a directly affected child and ATDs have been considered and if they would be deemed appropriate at a later time.	Officer See section 9.2, Detention notes	X	X	X		X
Only for detentions where the identity of a foreign national has not been established, fill out the Minister's Opinion Regarding the Foreign National's Identity (under paragraph 58(1)(d) of the Immigration and Refugee Protection Act) form [BSF510].	Minister's delegate (superintendent, manager, hearings officer)	X	X			X
Data entry in GCMS and NCMS or make arrangements with the closest inland enforcement office for the earliest possible data entry in NCMS.	Officer See section 9.1, Data entry					

If the detention continues and the detainee will be placed in or transferred to a detention facility, all paper copies given to the detainee must not have any staples or paper clips to ensure that they can be brought in the detention facility. In addition, the following tasks must be completed:

Task	Responsibility and References	Uploaded to GCMS	Paper copies			
			Case file	Detainee or designated representative	Detention Facility	IRB
Fill out the Detainee Medical Needs form [BSF674].	Officer See section 9.4, Detainee medical needs	X	X	X	X	
Fill out the National Risk Assessment for Detention form [BSF754].	Officer See section 9.5, Placement: national risk assessment for detention	X	X	X	X	
Management review (part 1) of the legal authority and detention placement. The name of the reviewing manager must be added to the NRAD form by the officer.	Management See section 9.6 Management review of detention cases					
Fill out the Order for Detention form [BSF304].	Officer See section 9.3, Order for Detention	X	X		X	
If the detainee will be transported by contracted security guards, notify the contracted security guards of all transport request as soon as practicable to minimize any delay.	Officer See section 11.6, Transport					
Provide in writing to the detainee the name, address and telephone number of the detention facility with any other regional detention facility information. If the detainee will be detained in a provincial correctional facility, give the DLO's or designated officer's contact information as well.	Officer			X		
Fill out the Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524], notify the IRB – Immigration Division and save in GCMS evidence (e.g. copy of the facsimile receipt) that the IRB – Immigration Division has been informed.	Officer	X	X			X
Management review (part 2) – quality review of detention cases.	Management See section 9.6, Management review of detention cases					
Notify the Canadian Red Cross by sending an email to IDMP@REDCROSS.CA and keep the email for each case involving unaccompanied minors, persons unable to appreciate IRB proceedings, emerging issues and death in custody.	CBSA regional management See section 8.1, Canadian Red Cross		X			

9.1. Data entry

Detention tracking information is very time sensitive and must be entered into the Global Case Management System (GCMS) and the National Case Management System (NCMS) databases as soon

as possible. Both systems are used to track detainee cases and to produce statistics for detention program management and for the public.

GCMS

Most detention forms, such as an Order for Detention, are available in GCMS, which allows officers to fill them out electronically. To ensure consistency and the ability to track cases, all GCMS-generated detention forms must be saved in the associated activity (for example, examination, arrest).

Some detention forms, such as the National Risk Assessment for Detention and Detainee Medical Needs forms, are currently available only as a fillable PDF, which allows officers to fill them out electronically. To ensure consistency and the ability to track cases, all filled-out detention forms that are not available in GCMS must be saved in GCMS, under the detainee's unique client identifier (UCI). Multiple forms may be simultaneously scanned and uploaded in the same attachment, as long as they are clearly identified:

- Navigate to "Clients" > "Documents" > "ID Supporting Documents" sub tab.
- Create a new record.
- Select the following options:
    - Type: CDN Immigration Doc
    - Sub Type: Client Submission
    - Document #: Form(s) BSF#
    - Country of Issue: Canada
    - Document Name: Name(s) of the form(s)
- Complete the "Issue Date".
- Add a new attachment in PDF format.

See the GCMS Wiki reference materials, Arrest & Detain and Detained for Examination or MD Review for more details. It is essential that the request for detention review and the detention summary screens in GCMS be completed as soon as possible by either the officer or the minister's delegate. If the detainee's detention facility or detention grounds change, it must be updated in GCMS.

NCMS

NCMS must be used for tracking all detentions originating at ports of entry and inland offices. All immigration holds must be saved in NCMS for detentions that last more than 15 minutes or when a short-term detention room or cell is used.

- If the detainee is later released prior to placement in or transfer to a detention facility, officers must select the NCMS option "Arrest and Release";
- If the detainee is placed in or transferred to a detention facility, officers must select the NCMS option "Arrest and Detained".

In addition, if a detainee is being transferred to a detention facility, an NRAD event must be completed under the "Immigration Hold" tab in NCMS. Officers must create a new NRAD event, enter the total score in the disposition section and select a vulnerable category (if applicable). If a person is detained less than a 15 minutes and no short-term detention rooms or cells were used before release, an immigration hold in NCMS is not necessary (e.g. an officer detains and releases a person after realizing it was not the right

person; an officer executes an arrest warrant and the person is immediately released). For procedures on entering detention data into NCMS, please see the NCMS User Guide.

Most detention cases are forwarded to an inland enforcement office, which will create an immigration hold in NCMS. However, if a detention originates at a port of entry that does not have access to NCMS and the case will not be forwarded to an inland enforcement office (e.g. a person is detained and released at a port of entry before the first detention review), then an email request to create an immigration hold must be sent to the nearest inland enforcement office for the earliest possible data entry to NCMS.

For NCMS tracking of a minor on Alternative Arrangement, Housing or Detention, please see the Standard Operating Procedures.

9.2. Detention notes

It is the officer's responsibility to clearly identify the initial factors that led to the decision to detain a person. An officer must be satisfied that given all the available information, the facts warrant the detention of an individual. Grounds and factors for detention, actions undertaken, information to be received and the facts justifying the officer's decision must be supported in the detention notes [BSF508] and uploaded in GCMS. When documenting their decision, officers should take the following steps:

- make a brief case history including actions taken to provide context for the reasoning;
- record the detention grounds (section 6.3);
- make a list of the applicable detention and release factors (sections 6.4 to 6.8);
- record the enforcement objective (e.g. to ensure the detainee appears at the immigration hearing or the removal from Canada, to establish the identity, to complete the examination or to establish the suspected inadmissibility);
- consider the best interests of a directly affected child or the best interests of the child (sections 6.10 and 6.11 and Annex B)
- show that ATDs have been considered and weighed against the detainee's identified risk. Officers must clearly document which ATDs have been considered and how they will not mitigate the associated risk (section 6.10 and ENF 34, Alternatives to Detention).

A detailed decision will help those involved, specifically community liaison officers, hearings officers and IRB members, to understand the reasoning that led to the decision to detain a person as well as the factors that contributed to maintaining the decision for an extended duration. A rigorous approach to the detention notes will support the action taken and the evolution of the file throughout the process (from the initial examination to the most recent detention review before the Immigration Division). In addition, appropriate and complete detention notes are critical to judicial reviews at the Federal Court, provincial courts and the IRB and any future file reviews.

When preparing the detention notes, the officer must show that their decision is supported by a rigorous assessment of the facts, including factors prescribed by IRPR. Although these prescribed factors must be considered during the officer's initial assessment of the situation, they are not restrictive; it is an analysis of the file in its entirety that will determine whether detention is necessary. If release on an ATD is deemed appropriate but it is not possible to effect release within a reasonable period of time (e.g. depositor not available, time needed to raise cash for deposit, release plan to be put into place), placement in a detention facility may be warranted until release can be effected. In such cases, the

proposed ATD should be clearly documented and release effected as soon as possible. Refer to ENF 34, Alternatives to Detention for further information.

9.3. Order for Detention

The Order for Detention form [BSF304] is used when an individual is detained under section A55 and needs to be placed in or transferred to a detention facility (i.e. IHCs, provincial correctional facilities and police stations). Officers must fill out the form, and the receiving detention facility staff must be given a copy. At the time of the transport, the detainee must receive in writing: the name, address and telephone number of the detention facility. If the detainee is detained in a provincial correctional facility, the DLO's or designated officer's contact information must be given. The form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred.

9.4. Detainee medical needs

The intent of the Detainee Medical Needs (DMN) form [BSF674] is to ensure national consistency in gathering and sharing information regarding detainee medical needs with detention staff. The officer making the detention decision must complete the DMN form to ensure the safety and well-being of the detainee. This form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred. An information session on the DMN form is available to officers in the following training and learning section: http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp.

Information in the health condition section is based on information stated by the detainee, and its accuracy cannot be validated before a consultation with a healthcare professional. The form is not a medical diagnosis, but a tool for detention staff to note any information pertaining to the detainee's self-identified needs before the detainee has their initial consultation with a healthcare professional. The form contains information on the detainee's health needs (such as mobility impairment) and life-threatening health conditions (such as heart disease, diabetes or allergies). In addition, the DMN form [BSF674] contains emergency contact information. If the detainee provided contacts in this section, the CBSA will contact the individuals listed in the event of a life-threatening health condition or the death of the detainee in CBSA custody or control during the detention period. If required, the detainee's personal information will be shared with the emergency contact. See section 10.2, In-custody death or life-threatening condition notification, for more details.

In addition, the DMN form [BSF674] contains specific questions on self-identified mental health conditions (such as depression or bipolar disorder) and indicators (such as a previous suicide attempt), which may indicate a predisposition to suicide and self-harm. Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. If a person being detained is believed to be suicidal or self-harmful, see section 10.1, Procedure: suicidal and self-harmful detainees.

The DMN form [BSF674] must be placed in the detainee's case file, and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically); and
- the detention facility personnel (the healthcare professional).

Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information was obtained. The individuals are being detained for IRPA purposes regardless if the detention facility is owned by the CBSA or not, and the disclosure is to ensure detainees' well-being and to assess their health needs.

Subsequent assessments

Until the person is released from detention, a subsequent assessment using the DMN form [BSF674] must be completed:

- at least once every 60 days after every assessment if detainees are detained in a provincial correctional facility; or
- sooner if the detainee self-identifies a change in their medical condition or if a possible change in their medical condition is observed by any custodial staff, regardless of the detention facility.

This is to ensure that the form is up to date in case the detainee needs to be quickly transferred to another detention facility or the CBSA needs to notify the emergency contact(s). For detainees in an IHC, the responsibility lies with the officers working at the IHC. For detainees in a detention facility elsewhere (such as a provincial correctional facility), the responsibility lies with a DLO or an officer designated to perform this function.

9.5. Placement: national risk assessment for detention

The placement in or transfer of a detainee to a detention facility cannot be used as a form of punishment, and the intent of the NRAD form [BSF754] is to ensure national consistency in a transparent and objective way. The officer making the detention decision must complete the NRAD form and must identify the detainee's risk and vulnerability factors to ensure the safety and well-being of the detainee, other detainees and staff. This form is not required if the detainee is released before any placement in or transfer to a detention facility has occurred. An information session on the NRAD form is available to officers in the following training and learning section: http://atlas/pb-dgp/res/toolkit-outils/detention/forms-formulaires/index_eng.asp.

Detention placement assessment

Officers must rely on facts and evidence for which there are reasonable grounds to believe that the NRAD risk and vulnerability factors exist. The NRAD risk and vulnerability factors are as follows:

- Risk factors #1 and #2 allocate points if there are reasonable grounds to suspect a detainee is inadmissible due to security grounds or organized criminality.
- Risk factor #3 allocates points based on the number of years that have passed since the last known offence or conviction, if any, that may cause inadmissibility for serious criminality or criminality. Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment.
- Risk factors #4 and #5 allocated points based on the number of known acts, offences or convictions involving violent or severely violent crime. For the purpose of completing risk factors #4 and #5, an officer could consider the last outstanding charge if the person has been charged but the trial has not been concluded or the conviction date set. These questions apply equally to

persons who have committed violent acts associated with inadmissibility pursuant to paragraph A35(1)(a). Offences where an individual was found not guilty or where charges have been withdrawn must not be counted in the assessment. The following table offers a general overview of common non-violent crimes, violent crimes and severely violent crimes:

Crime type	Common crime examples (with criminal code references)
Non-violent crime	• Possession of child pornography (subsection 163.1(4)) • Operation while impaired (section 320.14) • Theft (section 322) • Breaking and entering with intent, committing offence or breaking out (section 348) • Fraud (section 380) • Possession of a controlled substance (section 4 of the Controlled Drugs and Substances Act) • Trafficking in substance (section 5 of the Controlled Drugs and Substances Act)
Threats or violent crime	• Uttering threats (section 264.1) • Assault (section 265) • Sexual assault (section 271) • Includes all severely violent crimes (see below)
Severely violent crime	• Assault with a weapon or causing bodily harm (section 267) • Sexual assault with a weapon, threats to a third party or causing bodily harm (section 272) • Aggravated sexual assault (section 273) • Murder (section 229) • Manslaughter (section 234) • Robbery (section 343) • Torture (section 269.1)

- Risk factor #6 allocates points if in the last two years, a detainee was involved in a serious incident during the arrest or was involved in a major breach of the detention facility rules of an IHC, a provincial or a federal correctional facility or a port of entry or inland office cell. It includes major breaches that have occurred in detention facilities outside Canada. The CBSA National Detention Standards – Disciplinary System define a major breach as the following: a detainee commits, attempts or incites acts that are violent, harmful to others, or cause an unsafe environment in the detention facility (for example, resisting arrest, using physical violence aimed at another person, being in possession of any item that may be considered as an offensive weapon, or throwing objects at another person).
- Risk factor #7 allocates points if a detainee previously escaped or attempted escape from legal custody (e.g. from a detention facility or from the custody of an officer).
- Risk factor #8 allocates points if a detainee remains the subject of an unexecuted criminal warrant for arrest. In the context of completing the NRAD, warrants issued under immigration or traffic laws are not considered as criminal warrants and, as a consequence, do not have any repercussions for this risk factor.

- Vulnerability factor #9 reduces points if a detainee is a vulnerable person. Only one vulnerable category can be selected, even if the detainee is part of more than one vulnerable category. For information on vulnerable persons, see section 6.13.

Decision

Any additional information supporting the officer's decision must be recorded in the narrative section of the NRAD (such as details of key risk factors, the detainee's comments, incidents and changes in the facility type for detention). Based on the total sum of points attributed to the risk and vulnerability factors, a detainee should be detained in a detention facility according to the total score, as follows:

- 0 to 4 points = IHC (where available)
- 5 to 9 points = IHC or provincial correctional facility (default to IHC where risk can be mitigated)
- 10 points or more = provincial correctional facility

Based on the detainee's NRAD score, ports of entry and inland offices near an IHC can refer detainees for placement in an IHC, if transport can be easily facilitated the same day, or in a provincial correctional facility. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a provincial correctional facility. However, inland enforcement offices may later refer detainees for transfer to an IHC based on the detainee's total NRAD score (see section 11). IHC managers are the ultimate decision makers to determine if a detainee's risk factors and behaviour can be appropriately managed within the IHC.

To ensure procedural fairness of each assessment or subsequent assessment, the detainee must be informed of the risk and vulnerability factors taken into consideration, and officers must ask if there is anything the detainee would like to add that may impact their decision before the chosen facility type has been finalized. It is an opportunity for the detainee to bring new elements to the knowledge of the officer, it is not an obligation for the detainee to response. The officer is not bound by the information given by the detainee; however, the information must be taken into consideration in compliance with procedural fairness. If a detainee refuses to speak with the officer, the officer should rely on other information sources to complete the assessment (e.g. a file review, security guards' observations, incident reports, a designated representative). If the detainee was not afforded an opportunity, the officer must explain why on the NRAD.

Details of the key risk factors, criminal convictions, the detainee's behaviour, information given by the detainee (or the refusal thereof) and any other elements supporting the officer's decision must be recorded in the decision section. This section must be completed to support the decision being made, and it is not sufficient to state "refer to file". The decision must be communicated to the detainee, the NRAD must be placed in the detainee's case file and a copy of the form must be given to the following:

- the detainee or designated representative (by hand, by mail or electronically); and
- the detention facility personnel.

Paragraph 8(2)(a) of the Privacy Act (consistent use) allows the disclosure of information where the disclosure is made for the purpose for which the information was obtained. The individuals are being detained for IRPA purposes regardless if the detention facility is owned by the CBSA or not, and the disclosure is to ensure the safety of the detainee, other detainees and staff where the detainee is being held.

For the initial NRAD assessment, the detention placement decision shall be reviewed prior to the placement of a detainee in a detention facility by the authorities listed below (see section 9.6, Management review of detention cases, for more details).

Subsequent assessments

Until the person is released from detention, a subsequent assessment using the NRAD form [BSF754] must be completed:

- at least once every 60 days after every assessment if detainees are detained in a provincial correctional facility; or
- sooner if new information or a change in circumstances has a repercussion on the detainee's total score or the detention placement, regardless of the detention facility.

Subsequent assessments must be supported by information to corroborate the status quo or the change in the facility type for detention. For detainees held in an IHC, the responsibility lies with the officers working at the IHC. For detainees held in a detention facility elsewhere (such as a provincial correctional facility), the responsibility lies with a DLO or an officer designated to perform this function. Changes in the person's risk and vulnerability factors and the ability to mitigate that risk within an IHC should be considered at each assessment.

Requests for an early subsequent assessment may be received from individuals (e.g. counsels and detainees) from time to time. These requests must be responded to with notes to file, and any new circumstance must be taken into consideration. When a request is made, if the officer responsible for filling out the subsequent assessment is of the opinion that no circumstances have changed (i.e. no impact on the detainee's total NRAD score), then no early subsequent assessment is needed. However, a formal response must be sent to the requestor explaining the subsequent NRAD assessment process and the decision.

Detainees medically unfit for placement or transfer

If a healthcare professional recommends against moving a detainee because of a medical condition, the information must be communicated to an IHC manager. In cases of a disagreement, the IHC manager is the ultimate decision maker able to authorize or deny a detainee's placement or transfer.

The decision to authorize or deny the placement or transfer should be made in consultation with IHC healthcare professionals and take into consideration the safety and well-being of the detainee, other detainees and staff. Due to information privacy laws, healthcare professionals may not be authorized to disclose details or personal information to CBSA staff. However, they can make recommendations on how to facilitate a detainee's placement or transfer or give advice regarding when a detainee should be fit for transfer. If an IHC manager concurs that a detainee is not medically fit for transfer, it should be documented on the NRAD form [BSF754] in the additional information section. Regular follow-up should be done with the healthcare professionals in case the detainee's medical condition improves.

9.6. Management review of detention cases

Despite it not being a legislative requirement, the CBSA has established an administrative process to ensure management oversight and visibility of all continued detention cases. No management permission

is needed for officers to initiate a detention. In addition, no management review is needed if the arresting officer determines release is appropriate.

The term “continued detention” refers to the decision, following an arrest, to maintain detention and have the individual placed in a detention facility. All continued detention cases shall be reviewed by one of the following members of management:

- a superintendent (FB05) or higher regional authority for all port of entry cases; or
- an inland supervisor or manager (FB05/FB06) or higher regional authority for all inland cases.

Should one of the above members of management not be available onsite when continued detention is being considered, officers must call an authorized duty manager or approved management at another location or region if necessary. The management personnel conducting the review of the detention must have experience in the application of the IRPA and to be aware of detention and release procedures. In addition, they must have completed relevant training (e.g. information session on the NRAD form) and have access to GCMS.

Part 1 – Legal authority and detention placement

This first part can be done in person or remotely (e.g. by phone or email after regular office hours), and it must be done prior to the placement of a detainee. Management reviewing the detention case must consider any new information and be able to answer these two questions:

- Does the legal authority exist in the IRPA for this detention?
- Is the initial detention placement decision appropriate?

The management review should focus on the legal authority of the detention, and when clarification is necessary, they should ask questions to better understand the relevant facts of the case. They may give advice to the officer regarding the case, but they should avoid challenging the officer’s detention decision if the legal authority to detain exists. This way, the officer’s detention decision is not fettered by a higher level of authority, and the decision maker can clearly be identified. Here are some facts that must be clarified:

- What is the detainee’s immigration status (Canadian citizen, registered Indian, permanent resident, protected person or foreign national)?
- Where the detention did occur (in Canada or on entry into Canada)?
- What are the applicable detention grounds?

In cases where the detention decision is found to be lacking legislative authority under the IRPA, the reviewing manager must release the detainee. See section 12, Procedure: release by officer before the first detention review, for more information.

The management review should also look at the NRAD risk and vulnerability factors, the given details by the detainee, the total score and the detainee placement decision. Accurate NRAD information is relevant even for ports of entry and inland enforcement offices not located in close proximity to an IHC, as the detainee may later be transferred to an IHC based on their total NRAD score. Once the legal authority of the detention and placement decision have been reviewed, the name of the reviewing manager must be added to the NRAD form by the officer. In the case of a disagreement regarding the total NRAD score or detention placement, the reviewing manager is responsible for performing the subsequent NRAD

assessment by filling out an NRAD form [BSF754]. This way, the new decision maker can clearly be identified.

Part 2 – Quality review of detention cases

This second part must be done in person prior to the first IRB detention review and may be done by another member of management who meets the above requirements. Reviewing management must confirm that the detention forms are properly completed and placed in the person's file and the required forms are uploaded in GCMS. They must confirm that detentions factors are clearly stated in the detention notes [BSF508], aligned with the selected detention grounds and supported by relevant facts. They must confirm how the best interest of the child and ATDs have been considered and if they would be deemed appropriate at a later time. Finally, reviewing management must confirm that data entry in NCMS is done or arrangements were made for its completion. See Annex A – Detention Checklist for more information.

Once the detention paper file is completed and has been reviewed by management, it may leave the originating port of entry or inland enforcement office.

9.7. Detention review after 48 hours and informing the IRB

If the detention continues, the Immigration Division of the IRB will review the reasons for continued detention within 48 hours following the start of the detention or as soon as possible thereafter. As required under subsection A55(4), the officer shall without delay give notice to the Immigration Division by sending the Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524] to the registry by facsimile. The officer will retain on the file evidence that the Immigration Division has been informed. A copy of the facsimile receipt is evidence that the transmission has been completed. For more information on detention review pursuant to section A57, as well as the rules applicable to the Immigration Division, see ENF 3, Admissibility, Hearings and Detention Review Proceedings. See section 9.1, Data entry, for more information.

Should an individual be subject to a 48-hour detention review and detention be maintained by the IRB member, the detainee must be brought before the Immigration Division at least once in the seven-day period following the first review, then at least every 30 days following the preceding review. When the Immigration Division has jurisdiction, that is, after the first detention review is held, hearings officers may make an application for an early detention review if continued detention is no longer justified.

The processes for a designated foreign national and an individual named in a security certificate are different. For more information on detention review pursuant to the Immigration Division Rules, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

10. Care of detainees while in short-term detention rooms or cells

A short-term detention room or cell is an area that the CBSA has designated as secure at a POE office or an inland enforcement office pending the detainee's placement in or transfer to another location. A short-

term detention room or cell is not considered as a detention facility because it was not designed for long detentions and since few services are available to detainees. A detainee should not spend more than 24 consecutive hours in a short-term detention room or cell before their release or transfer to a more suitable detention facility.

Officers or contracted security guards must conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes using the Detention Cell Log and Instructions [BSF481]. Officers should consult and follow the Enforcement Manual, Part 6, Chapter 2, Care and Control of Persons in Custody.

10.1. Procedure: suicidal and self-harmful detainees

The IRPA does not authorize the detention of an individual for their own safety or protection, except with special considerations for minor children. Persons who are believed to be suicidal or prone to self-harm are considered vulnerable persons; see section 6.13. If an officer has reason to believe an individual is suicidal or prone to self-harm, the first intervention is for the officer to show concern and speak with the individual. For more information, officers should complete the online training course entitled "Prevention of Suicide and Self-Harm among Detainees" (H2047-P) available through the CAS portal.

Mental health questions are of a sensitive nature and should be asked in a non-judgemental way. Officers should use a friendly and accepting tone and allow the person time to speak. Contrary to common belief, asking someone if they are having thoughts of killing themselves will not make them suicidal. If an officer is concerned about a risk of suicide, the officer must ask questions to the detainee. The following examples can be used to determine if the detainee has thoughts of suicide:

- The situation you describe sounds serious. I want to know if you have considered committing suicide.
- I can see you are feeling down or panicky. Sometimes when people feel like this, they have thoughts of killing themselves. Are you thinking of suicide?

If a detainee says that they are thinking about ending their life, the officer must acquire additional information from the detainee. The following examples can be used to investigate the detainee's plan for suicide:

- I want to know if you have a plan to commit suicide.
- How do you plan to take your life?
- Where do you plan to do this?
- Do you have a means to do this?

Those at the highest risk for suicide in the near future have a specific suicide plan, the means to carry out the plan, a time set for doing it and an intention to do it. If a detainee has a plan and intends to end their life soon, do not leave them alone. Officers should call an IHC healthcare professional (if available) or local crisis support centre right away and put them in contact with the detainee.

At a port of entry or an inland enforcement office, if a detainee is believed to be suicidal or self-harmful, a constant visual check or video monitoring by an officer or a contracted security guard is required using

the Detention Cell Log and Instructions [BSF481]. The detainee is to be kept under continuous monitoring until:

- it is discontinued by the immediate superintendent/manager on duty;
- the detainee is released from custody; or
- the detainee is transferred to an IHC or a provincial correctional facility.

Once the detainee has been transferred to an IHC or a provincial correctional facility, the healthcare professional will make an assessment to determine if the monitoring should continue or not.

10.2. In-custody death or life-threatening condition notification

In the case of an in-custody death, where there is an investigative body (e.g. local police or RCMP) involved, it will notify the emergency contact. In cases where an investigative body is not undertaking the notification, it will be done by the regional director general. See Operational Bulletin PRG-2014-51: Protocol Regarding the Death of an Individual Detained Pursuant to the IRPA, the CBSA guidelines for responding to a serious incident and death in CBSA custody or control, and the Public Communications Protocol – In-Custody Death or Serious Injury for more details.

In the event of a life-threatening health condition to the detainee in CBSA custody or control during the detention period, if requested by the detainee on the DMN form [BSF674], the duty manager has the responsibility to contact the emergency contact. Phone calls to emergency contact(s) are only required in instances where we have reasons to believe the condition is life-threatening or death is imminent.

11. Placement and transfer of detainees from a non-IHC region to an IHC

This section is intended for non-IHC regions (i.e. Atlantic, Northern Ontario, Southern Ontario and Prairies). It clarifies their options regarding placement in and transfer of detainees to an IHC (i.e. Quebec, Greater Toronto Area and Pacific). Based on the detainee's NRAD score, ports of entry and inland offices near an IHC may refer detainees for placement in an IHC, if transport can be easily facilitated the same day, or in a provincial correctional facility. Ports of entry and inland enforcement offices not located in close proximity to an IHC can solely refer detainees for placement in a provincial correctional facility. However, inland enforcement offices may later refer detainees for transfer to an IHC based on the detainee's total NRAD score. The guiding principles for achieving national consistency in the placement and transfer of detainees from a non-IHC region to an IHC region are as follows:

- IHCs play a key role in the effective management of the CBSA national detention program and are available to all regions.
- Based on the NRAD assessment, regional IHCs must accommodate the maximum number of detainees possible to reduce reliance on provincial correctional facilities, regardless of where a detention is originating from.
- Detainee placement and transfer requests from non-IHC regions must be accepted in the same way as if requests were originating from within the IHC region.
- Where detainee transfer to an IHC region is requested, all efforts must be made to facilitate detainee placement in and transfer to an IHC, and in the case of a disagreement, the IHC

manager is the ultimate decision maker.

Regional IHCs and the non-IHC regions they serve

IHC	Placement in an IHC for non-IHC regions	Transfer to an IHC for non-IHC regions
	The following ports of entry and inland offices are near enough to an IHC to expect a same-day detainee transport:	The following inland offices are further away from an IHC but may request a detainee transfer to an IHC:
Laval IHC	• Northern Ontario Region: Cornwall, Prescott, Lansdowne and Macdonald–Cartier International Airport ports of entry. • Northern Ontario Region: Cornwall, Ottawa and Gatineau inland enforcement offices.	• Atlantic region: all inland enforcement offices.
Toronto IHC	• Southern Ontario Region: Fort Erie, Niagara Falls Rainbow Bridge, Queenston–Lewiston Bridge and London International Airport ports of entry. • Southern Ontario Region: London and Niagara inland enforcement offices.	• Northern Ontario Region: Kingston and Thunder Bay inland enforcement offices. • Southern Ontario Region: Windsor and Sarnia inland enforcement offices.
Surrey IHC	Not applicable.	Prairies Region: All inland enforcement offices.

Transfers to an IHC in a region other than the identified serving IHC may be considered on a case-by-case basis but should not be common practice.

11.1. When a detainee's placement or transfer should be considered

Detainees with a total NRAD score of 0 to 4 or 5 to 9 points (if risk can be mitigated) may be placed in or transferred to an IHC region. In non-IHC regions, prior to making the placement or requesting the transfer of a detainee to an IHC, officers must take into consideration the following factors:

- the expected length of detention;
- the imminence of a release on an alternative to detention;
- the case complexity;
- the detainee's opinion;
- the detainee's family location and relationships;
- the detainee's legal or designated representative's opinion; and
- other personal ties to a specific region.

While efforts should be made, non-IHC regions have flexibility in determining if and when a detainee should be placed in or transferred to an IHC region. It is expected that some cases can be deemed not appropriate for placement in or transfer to an IHC region based on one or more of the factors listed above. These factors and any additional information supporting the officer's decision must be recorded in the NRAD narrative section.

11.2. Requirements

Detainee placement requests from non-IHC regions must be accepted in the same way as requests originating from within the IHC region. Here are examples where it would be appropriate to place a detainee in an IHC:

- In a non-IHC region, an inadmissible foreign national wishes to withdraw his application at a port of entry (airport) that is near an IHC. The foreign national is unable to leave the port of entry because the last return flight has already left and no other return flight is available for the next two days. The officer feels that the foreign national is unlikely to appear for his flight. The officer has considered all other ATDs; however, none of them are deemed appropriate to mitigate the risk. The officer decides to detain the foreign national to complete the examination until the next return flight is available. The detainee's total NRAD score is 6 and, after review by a superintendent, the detainee is placed in an IHC, as the risk can be mitigated in the IHC.
- In a non-IHC region, an inadmissible foreign national is detained at an inland office that is near an IHC. The officer believes that the foreign national is unlikely to appear for removal. The officer has considered ATDs; however, none of them can mitigate the risk. The detainee's total NRAD score is 3 and, after review by an inland enforcement supervisor, the detainee is placed in an IHC.

Requirements for the transfer to an IHC

When a detainee is held in a provincial correctional facility, consideration for transfer to an IHC should be given by the DLO or an officer designated to perform this function.

Inland enforcement offices not located in close proximity to an IHC may refer detainees for transfer to an IHC based on the detainee's total NRAD score. Requests for transfer to an IHC should not be undertaken before a 48-hour detention review. If the detention is maintained, transfers may be requested after the 48-hour detention review for detainees transported by land or after the seven-day detention review for detainees transported by air. In order to ensure management oversight and visibility of all detention cases, all decisions to transfer a detainee to an IHC shall be reviewed by an IHC manager prior to the transfer. Where detainee transfer to an IHC region is requested, all efforts must be made to facilitate detainee transfer, and in cases of disagreement, the IHC manager is the ultimate decision maker. Here are examples where it would be appropriate to transfer a detainee to an IHC:

- In a non-IHC region, the detention of an inadmissible foreign national has been maintained following the seven-day detention review because the detainee is unlikely appear for removal. The DLO does not expect an early detention review prior to the 30-day review. In consultation with the detainee, the DLO recommends a transfer to an IHC. The detainee's total NRAD score is 3 and, after review by an IHC manager, the detainee will be transferred to the IHC once the transfer arrangements have been confirmed.
- In a non-IHC region, an inadmissible permanent resident's detention has been maintained following the 30-day detention review on the grounds of a danger to the public. The officer designated to fill out the subsequent NRAD assessment does not expect that the detainee will be released at the next detention review, and they continue to await a danger opinion from IRCC. The officer also noted that the detainee would like to be transferred to an IHC and has relatives in the IHC region. The detainee's total NRAD score is 9. After discussion and review by an IHC manager, it is determined that the detainee's risk factors and behaviour can be appropriately

managed within the IHC. The detainee will be transferred to an IHC once transfer arrangements have been confirmed.

In preparation for the detainee's transfer and to ensure the safety and well-being of the detainee, other detainees and staff, the requesting DLO or the officer designated to perform this function has the responsibility to obtain the following from the detention facility where the detainee is currently being detained prior to the transfer:

- information regarding the detainee's behaviour, incidents involving the detainee and reported breaches of security;
- information regarding physical and mental health needs and current treatment;
- the contact information of the healthcare professional at the provincial correctional facility; and
- comments and recommendations from the healthcare professional to ensure the detainee is suitable for transfer.

11.3. Placement and transfer refusal

In exceptional circumstances, an IHC manager may request that the detainee's placement or transfer be postponed due to circumstances outside their control such as a shortage of availability in the requested IHC section (male, female and family), the IHC having nearly reached maximum capacity (85% and above), or a significant event in progress (e.g. major disturbance) that has temporarily reduced the IHC's capacity. In addition, an IHC manager may refuse a detainee's placement or transfer if the perceived risk posed by the detainee cannot be mitigated in the IHC. Transfers to an alternate IHC may be considered on a case-by-case basis but should not be common practice.

Should an IHC manager be unable or unwilling to accept a detainee from a non-IHC region, the rationale and potential future transfer dates must be communicated by the IHC to the requesting region and the National Headquarters – Inland Enforcement Operations Unit.

11.4. Detainee case management

Detainee case management following placement in an IHC

Due to proximity, the non-IHC region should continue to manage the detainee's case file (e.g. investigation, detention reviews and removal, updates to GCMS and NCMS) and leverage remote working tools as required (e.g. teleconference and videoconference) even after the detainee has been placed in an IHC. The IHC region will manage the detention responsibilities, such as detention placement; discipline; subsequent NRAD and Detainee Medical Needs assessments; communication and meetings with community liaison officers, NGOs and legal representatives; and other interviews as required. Where the IHC region does not have information to respond to detainee requests, they should liaise with the file holder to obtain the required information.

If the non-IHC region is unable to manage the detainee's case file (e.g. the hearings officers in the non-IHC region are not available), then the whole file must follow the detainee and the IHC region must be notified. The referring superintendent, inland supervisor or assistant director must notify the receiving IHC region with the following information: the UCI, a case summary and the next detention review date. The notification must be sent to the following email addresses:

- **Laval IHC:** QUE_CPI_Agents_DL@cbsa-asfc.gc.ca, QUE_Mtl_ASFC_Aud_Det_Immigration_Adjoints_DL@cbsa-asfc.gc.ca and ASFC.O.I-R.DA/I-R.AD.O.CBSA@cbsa-asfc.gc.ca
- **Toronto IHC:** CBSA-ASFC_GTAR_EIOD-Dist_Holding_Centre@cbsa-asfc.gc.ca
- **Surrey IHC:** PAC-Dist_CBSA_EID_Detention_Operations@cra-arc.gc.ca

Detainee case management following transfer to an IHC

Due to distance, a non-IHC region cannot continue to manage the detainee's case file once it has been transferred to an IHC. The whole file must be transferred with the detainee, and the IHC region must be notified. The superintendent, inland supervisor or assistant director must make a formal request to the IHC region at least two working days before the transfer (see above for notification emails) to allow enough time to respond and make arrangements.

11.5. Notification

Legal counsel

In the event of a transfer to another region or facility, the detainee has the responsibility to inform their legal counsel and family members of the transfer and new location, if so desired. The CBSA must inform the detainee of their responsibilities and afford them the opportunity to contact their legal counsel prior to the anticipated transfer. If a detainee requires legal aid assistance, they should be referred to the provincial legal aid services in the region where they are currently detained.

Immigration and Refugee Board of Canada

Detainee placement in and transfer to a serving IHC will not have significant repercussions on the Immigration and Refugee Board (IRB) process because it aligns for the most part with the current IRB regional structure.

The transfer of a detainee to an IHC outside the scope of the IRB regional office that originally heard the matter requires a notification to the board from the receiving region as soon as possible for the scheduling of subsequent detention reviews and any other upcoming IRB hearings (e.g. a detainee transferred from the Prairies Region to the Toronto IHC). Any such request to the IRB must be processed in accordance with these guidelines (see ENF 3, Admissibility, Hearings and Detention Review Proceedings for more details).

11.6. Transport

The transport of a detainee for placement in or transfer to an IHC shall be undertaken in line with national detention standards for transport and the Enforcement Manual, Part 6, Chapter 8, Vehicular Transport of Persons under Arrest or Detention.

Transport by contracted security guards or CBSA officers

To the extent possible, contracted security guards should be used for detainee transport to and from facility locations. Where contracted security guards are not in place (i.e. regions without contracts), requests to use contracted security guards from another region may be supported with prior approval

from the IHC manager or detention program manager (e.g. a detainee from Northern Ontario region is being transported to the Toronto IHC and contracted security guards from Greater Toronto Area region are requested for the transport). Requests for transfer should be timely, and all parties should be informed as soon as practicable to enable efficient planning and logistics and minimize the use of overtime and extra duty pay.

Contracted security guard contracts are in place in the following regions: Greater Toronto Area Region, Quebec Region, Prairies Region, and Pacific Region. Where a transport is inter-provincial, the security contract must support the use of contracted security guards for transport between provinces. Discussions with the IHC or detention program manager responsible for the administration of the security guard contract and the contracted security supervisor or operational manager may be required to ensure that licensing in each province is in place.

Transport by land

All security guard statements of work contain a clause that includes travel within Canada, and their travel is not limited to one region. Security guards can be from the originating region, the receiving region or a combination of both as appropriate and approved by the IHC or detention program managers of both regions.

Transport by air

Where a detainee is arrested and detained and requires transfer to an admitting facility within the same region, transport by air may be a viable option. Currently the only region able to support the use of contracted security guards for transport of detainees by air is the Pacific Region. For all other regions not served by the Surrey IHC, where transport by airplane is needed, transport of detainees will be done by CBSA officers.

The assignment of CBSA officers to transport detainees (e.g. if security guards are unable to mitigate the risk posed by a detainee) must be authorized by a delegated manager.

Transport upon release

It is against CBSA policy to use a federal government vehicle to transport non-detained passengers due to liability concerns. This applies to all provinces regardless if the province insures the vehicle. The Enforcement Manual, Part 6, Chapter 8, Vehicular Transport of Persons under Arrest or Detention, says, “It is the policy of the CBSA to transport persons under arrest or detention when required in support of the enforcement and/or administration of CBSA legislation.” CBSA officers do not have the legislated authority to transport a person when the proceeding is not related to CBSA business. CBSA officers cannot use their powers under the IRPA or IRPR to achieve goals that are not in relation with the IRPA or IRPR.

Upon release, an individual is free to remain in the IHC region or to return to their home community in a non-IHC region as long it does not contravene an imposed condition. Although it is not required by legislation, the IHC region will pay the cost of the individual returning home in order to ensure the individual safely reaches their destination. Nevertheless, the individual may refuse CBSA assistance and travel by their own means. After approval by an IHC manager, the individual, including their personal

effects, will be provided prearranged transport (or money) to the degree possible and an itinerary to return to the final destination of:

- their place of original detention;
- their home community in Canada; or
- any other destination no further in distance than the place of original detention, if the individual chooses.

The most economical means (e.g. public transit, bus, train or plane) should be used, and arrangements should be made to avoid the need for overnight accommodation. However, when the individual's intention is to remain in the IHC region, there is no need to do so.

12. Procedure: release by officer before the first detention review

In the event that the grounds for detention cease to exist before the Immigration Division has conducted the first detention review (48-hour review), the officer or the reviewing manager may release the person being detained under subsection A56(1). Detention may no longer be justified because an ATD that sufficiently mitigates the risk posed has been identified. The following table contains the main tasks that must be completed to release an individual before the first detention review.

Task	Responsibility and References	Uploaded to GCMS	Paper copies			
			Case file	Detainee or designated representative	Detention Facility	IRB
If the detainee has already been placed in or transferred to a detention facility, fill out the Authority to Release from Detention form [BSF566]	Officer or management	X	X		X	
If any conditions apply, fill out the Acknowledgement of Conditions (the Immigration and Refugee Protection Act) form [IMM 1262E]	Officer or management See prescribed conditions below. See ENF 8, Deposits and Guarantees See ENF 34, Alternatives to Detention	X	X	X		
Data entry in GCMS and NCMS or make arrangements with the nearest inland enforcement office for the earliest possible data entry in NCMS.	Officer or manager See section 9.1, Data entry					
Use the original Request for Admissibility Hearing/Detention Review Pursuant to the Immigration Division Rules form [BSF524], write "RELEASED" on it and notify the IRB – Immigration Division	Officer or manager	X	X			X

Section A56 authorizes the officer to impose any conditions that they consider necessary. These conditions are imposed using the Acknowledgement of Conditions (the Immigration and Refugee Protection Act) form [IMM 1262E]. Procedures for deposits and guarantees are found in ENF 8, Deposits and Guarantees, and procedures for ATDs are found in ENF 34, Alternatives to Detention.

Prescribed conditions

Subsection A56(3) states that if an officer orders the release of a permanent resident or foreign national who is the subject of either a report on inadmissibility on grounds of security that is referred to the Immigration Division, or a removal order for inadmissibility on grounds of security, the officer must also impose the prescribed conditions on the person. The conditions that must be imposed on a foreign national or permanent resident are the following (section R250.1):

(a) to inform the CBSA in writing of their address and, in advance, of any change in that address;

(b) to inform the CBSA in writing of their employer's name and the address of their place of employment and, in advance, of any change in that information;

(c) unless they are otherwise required to report to the CBSA because of a condition imposed under subsection A44(3), A56(1), A58(3) or A58.1(3) or paragraph A82(5)(b), to report once each month to the CBSA;

(d) to present themselves at the time and place that an officer, the Immigration Division, the Minister or the Federal Court requires them to appear to comply with any obligation imposed on them under the IRPA;

(e) to produce to the CBSA without delay the original of any passport and travel and identity documents that they hold, or that they obtain, in order to permit the CBSA to make copies of those documents;

(f) if a removal order made against them comes into force, to surrender to the CBSA without delay any passport and travel document that they hold;

(g) if a removal order made against them comes into force and they do not hold a document that is required to remove them from Canada, to take without delay any action that is necessary to ensure that the document is provided to the CBSA, such as by producing an application or producing evidence verifying their identity;

(h) to not commit an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament;

(i) if they are charged with an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that charge in writing and without delay;

(j) if they are convicted of an offence under an Act of Parliament or an offence that, if committed in Canada, would constitute an offence under an Act of Parliament, to inform the CBSA of that conviction in writing and without delay; and

(k) if they intend to leave Canada, to inform the CBSA in writing of the date on which they intend to leave Canada.

12.1. Release: mandatory arrest and detention of a designated foreign national

Under subsection A56(2), officers cannot release a designated foreign national who is detained and who was 16 years of age or older on the day of the arrival that is the subject of the designation in question until:

(a) a final determination is made to allow their claim for refugee protection or application for protection;

(b) they are released as a result of the Immigration Division ordering their release under section A58; or

(c) they are released as a result of the Minister ordering their release under section A58.1.

For more information on detention review process, see ENF 3, Admissibility, Hearings and Detention Review Proceedings.

Annex A – Detention Checklist

Client Name	UCI					Date
Officer responsibility						**Management responsibility**
Forms/Tasks	**Uploaded to GCMS**	**Case file**	**Detainee or designated representative**	**Detention Facility**	**IRB**	**Management review (Part 2) – quality review of the detention case**
BSF561 – Notice of Arrest N/A for subsection A55(3)	☐	☐	☐			☐
BSF776 – Notice of Rights Conferred by the Vienna Convention	☐	☐	☐			☐
IMM1265B – Interpreter Declaration		☐				☐
Photograph and fingerprint		☐				☐
Query the National Crime Information Center and the Canadian Police Information Centre		☐				☐
BSF5012 – Detention brochure with facility info (name, address and telephone number), any other regional detention facility information. The DLO's or designated officer's contact information for provincial correctional facility only			☐			
BSF481 – Detention Cell Log, and conduct a visual check or video monitoring of detainees while in short-term detention rooms or cells at least once every 15 minutes.	☐	☐				☐
BSF508 – Detention Notes	☐	☐	☐		☐	☐
BSF510 – Minister's Opinion Regarding the Foreign National's Identity – only where identity has not been established	☐	☐			☐	☐
BSF674 – Detainee Medical Needs	☐	☐	☐	☐		☐
BSF754 – National Risk Assessment for Detention	☐	☐	☐	☐		☐
Management review (part 1) of the legal authority and detention placement. Add the name of the reviewing manager to the NRAD form.						
BSF304 – Order for Detention	☐	☐		☐		☐
Notify the contracted security guards of all transport requests (if needed)						
BSF524 – Request for Admissibility Hearing/Detention Review	☐	☐			☐	☐
Notify the Canadian Red Cross for unaccompanied minors, persons unable to appreciate IRB proceedings, emerging issues		☐				☐
Data entry in GCMS and NCMS or arrangements have been made						☐
Officer Name	**Reviewing Management Name**					

Place on client's physical file once completed

Annex B – National Directive for the Detention or Housing of Minors

1. INTRODUCTION

The Canada Border Services Agency (CBSA) is responsible for the administration and enforcement of the Immigration and Refugee Protection Act (IRPA), including the arrest and detention of permanent residents and foreign nationals in Canada. When exercising their authority to arrest and detain under IRPA and the Immigration and Refugee Protection Regulations (IRPR), CBSA officers are guided by jurisprudence as well as internal policies, directives and guidelines. Canada's immigration detention program is based on the principle that detention shall be used only as a last resort, in extremely limited circumstances and only after appropriate alternatives to detention (ATDs) are considered and determined to be unsuitable or unavailable.

This Directive is fully aligned with the Ministerial Direction issued by the Minister of Public Safety and Emergency Preparedness.

2. PREAMBLE

Canada's international obligations and domestic legislative and policy frameworks are the broad underpinnings of this Directive. Section A60 affirms the principle that the detention of a minor must be a measure of last resort, taking into account other applicable grounds and criteria, including the best interests of the child (BIOC). The United Nations *Convention on the Rights of the Child* (CRC), to which Canada is a party, states that the BIOC shall be a primary consideration in all state actions concerning children. In recognizing the vulnerability of children and research on the detrimental effects of detention and family separation on children, the CBSA developed the *National Directive for the Detention or Housing of Minors* for operational use, to achieve better and consistent outcomes for minors affected by Canada's immigration detention system.

3. DEFINITIONS

Alternative Arrangement for Minors (AAM): the transfer of custody of an accompanied or unaccompanied **non-detained** minor to a family member or a trusted friend/community member (who is not under CBSA custody), child protection services or a community-based organization. AAM is a new process in the CBSA's National Case Management System (NCMS).

Alternatives to Detention (ATDs): a release program that ensures people (adult or minor) are not detained under the IRPA at an Immigration Holding Centre (IHC) or provincial or any other facility for reasons relating to their immigration status in Canada. ATDs include allowing individuals to live in non-custodial, community-based settings while their immigration status is being resolved, which may include in-person reporting, deposits and guarantees, community case management and supervision and electronic supervision tools (e.g. voice reporting with location services).

Best Interests of the Child (BIOC): an international principle to ensure children enjoy the full and effective benefit of all their rights recognized in Canadian law and the CRC. It is also a rule of procedure that includes an assessment of the possible impact (both positive and negative) of a decision on the child or children concerned.

Community-based organizations (CBOs): non-profit groups that work at a local level to improve life for residents. The focus is on building equality across society in all streams – health care, environment, quality of education, access to technology, access to spaces and information for the disabled, to name but a few.

Detainee or detained: an adult or minor subject to an Order for Detention under section A55.

Family: (a) parent(s) or legal guardian(s) (p/lg) and a dependent minor. This may also include family members as defined by IRPR and situations where siblings are travelling together without their p/lg.

Housed minor: a foreign national, permanent resident or Canadian citizen who, after the completion of a BIOC interview, is kept with their detained p/lg at an IHC at the p/lg's request. A housed minor is not subject to an Order for Detention and is free to remain in and re-enter the IHC subject to the p/lg's consent and in accordance with the rules and procedures of that facility.

Minor: defined under the IRPA and the CRC as a person under the age of 18. In some provinces, a youth aged 16 or 17 is not considered a minor (see Annex D). However, this does not change the fact that they are considered to be a minor in the federal context (subsection R249).

Non-compliance: failure or refusal to comply, as with a law, regulation, or term of a condition.

Segregation (administrative): the separation of persons to prevent association with others.

Unaccompanied minor: a minor or siblings travelling together who do(es) not arrive in Canada as a member of a family or to join such a person.

4. OBJECTIVES

1. To stop detaining or housing minors and separating families, except in extremely limited circumstances.
2. To actively and continuously seek ATDs or AAMs when unconditional release is inappropriate.
3. To preserve the family unit for overall well-being and continuity of care.
4. To ensure that the detention or housing of a minor or the separation of a minor from their detained p/lg is for the shortest time possible.
5. To never place minors in segregation (or segregate them) at an IHC or provincial or any other facility.

5. LEGISLATIVE AUTHORITIES

Section A55 contains the arrest and detention provisions applicable to both adults and minors:

A55(1) and (2) – A designated officer may arrest and detain, with (1) or without (2) a warrant, when:

- the officer has reasonable grounds to believe a person is inadmissible to Canada and
  - is a danger to the public; or
  - is unlikely to appear for an immigration process (examination, admissibility hearing, minister's delegate review, or removal); or

- the officer is not satisfied of the identity of a foreign national in the course of any procedure under the IRPA.

A55(3) – A designated CBSA officer may detain a person on entry into Canada (limited to port of entry [POE] cases) when:

- the officer considers it necessary to do so in order for the examination to be completed; or
- the officer has reasonable grounds to suspect that the permanent resident or foreign national is inadmissible on grounds of security, violating human or international rights, serious criminality, criminality or organized criminality.

A55(3.1) – It is mandatory to arrest and detain a designated foreign national who is 16 years of age or older on the day of the arrival that is subject of the designation made by the Minister of Public Safety and Emergency Preparedness pursuant to subsection A20.1(1).

Section A60 enshrines the principle that the detention of a minor is a measure of last resort while concurrently legislating that the BIOC must always be considered:

> For the purposes of this Division, it is affirmed as a principle that a minor child shall be detained only as a measure of last resort, taking into account the other applicable grounds and criteria including the best interests of the child.

In addition, **section R249** outlines special considerations on the detention of minors:

(a) the availability of alternative arrangements with local childcare agencies or child protection services for the care and protection of the minor children;
(b) the anticipated length of detention;
(c) the risk of continued control by the human smugglers or traffickers who brought the children to Canada;
(d) the type of detention facility envisaged and the conditions of detention;
(e) the availability of accommodation that allows for the segregation of the minor children from adult detainees who are not the parent of or the adult legally responsible for the detained or housed minor children; and
(f) the availability of services in the detention facility, including education, counselling and recreation.

Other factors are prescribed in **section R248** for consideration before a decision is made on detention or release if it is determined that there are grounds for detention:

(a) the reason for detention;
(b) the length of time in detention;
(c) whether there are any elements that can assist in determining the length of time that detention is likely to continue and, if so, that length of time;
(d) any unexplained delays or unexplained lack of diligence caused by the Department or the person concerned;
(e) the existence of alternatives to detention; and
(f) the best interests of a directly affected child who is under 18 years of age.

Subsection R248.1 (1) states that for the purpose of paragraph R248(f) and for the application, in respect of children who are under 18 years of age, of the principle affirmed in section A60 of the Act, that

a minor child shall be detained only as a measure of last resort, the following factors must be considered when determining the best interests of the child:

(a) the child's physical, emotional and psychological well-being;
(b) the child's healthcare and educational needs;
(c) the importance of maintaining relationships and the stability of the family environment, and the possible effect on the child of disrupting those relationships or that stability;
(d) the care, protection and safety needs of the child; and
(e) the child's views and preferences, provided the child is capable of forming their own views or expressing their preferences, taking into consideration the child's age and maturity.

In addition, **subsection R248.1(2)** specifies that for the purpose of paragraph R248(f), the level of dependency of the child on the person there are grounds to detain shall also be considered when determining the best interests of the child.

The BIOC factors are binding on all relevant decision makers (border service officers, inland enforcement officers, hearings officers and hearings advisors, Immigration Division members of the IRB, etc.). Note that paragraph R248(f) enshrined recognition of the best interests of a non-detained (e.g. housed) child into law, which was a legislative gap. This amendment and list of factors do not suggest that the BIOC outweigh all other factors of the case: the BIOC are primary factors to be weighed against other primary factors, including those listed in paragraphs R248(a) to R248(e).

The following is a possible scenario that may be encountered in a BIOC interview:

- An irregular arrival of a family consisting of a father, mother, and two biological children (ages 9 and 10) seeking asylum in Canada.
- The father has a bona fide identity document, while the other family members do not.
- Mother and children are cooperative; no credibility concerns.
- The father admits to foreign criminal convictions with a potential for a subsection A36(1) inadmissibility and with potential violence; information on convictions is unavailable.

Sub-scenario 1: Nobody in the family speaks English or French; through an interpreter, the parents indicate no next of kin in Canada and are adamant that they stay together. No visible signs of distress are observed despite a year spent at a refugee camp.

BIOC determination 1: The CBSA officer weighs the case against prescribed legislation, specifically paragraph R249(d)(f) and subsections R248(1) and (2), and arrives at the decision to detain the father, as an ATD would not be appropriate, and to keep the family together at an IHC. An ATD review will be conducted as more information becomes available.

Sub-scenario 2: Each child is interviewed separately from their parents. Both children speak some English; they express the desire to go to school, indicate a degree of domestic violence and state that their mother's sister (a successful refugee claimant) lives in Montreal.

BIOC determination 2: The CBSA officer considers all facets of the case, specifically paragraphs R249(a) and R248(f) and subsection R248(1), and decides to detain the father at the IHC and release the mother and children. An ATD review will be conducted on the father as more information becomes available.

6. FUNDAMENTAL CONSIDERATIONS

1. Detention of a minor is a measure of last resort (see section A60 above). Detention is to be avoided to the greatest extent possible and applied for the shortest period possible.
2. AAMs and/or ATDs must always be considered first for minors and their p/lg and be actively pursued until release.
3. Family unity is to be highly factored in all detention-related decisions.
4. The BIOC are a primary consideration and may only be outweighed by other significant considerations such as public safety (i.e. flight risk, paragraphs R245(a) to (f), and danger to the public, section R246) or national security.
5. Detention may be considered when historic, consistent and willful breaches of IRPA or IRPR are demonstrated.
6. The BIOC assessment is to be conducted prior to any decision to detain or house a minor or separate a minor from their detained p/lg and should be conducted on a continual basis (subsection 8(2)).
7. A minor may be detained or housed if no suitable ATDs or AAMs can be found, provided that:
   a) it is in the BIOC to be housed with their p/lg;
   b) there are well-founded reasons to believe the minor is a danger to the public;
   c) if identity is a serious concern, there are well-founded reasons to believe the minor or their p/lg may represent a risk to public safety and national security; and
   d) the family is scheduled or can be scheduled for removal within seven days and has demonstrated a consistent pattern of non-compliance and willful breaches of conditions or violations of IRPA or IRPR, elevating the risk of them being unlikely to appear for removal.

7. THE BEST INTERESTS OF THE CHILD (BIOC)

Mental health evidence is clear that both detention and family separation have detrimental consequences for children's well-being. The BIOC are best achieved when children are united with their families in community-based, non-custodial settings, where possible.

1. On all detention decisions that affect minors, CBSA officers must consider the BIOC as a primary consideration as per section R248.
2. The BIOC are to be determined separately and prior to the decision to detain the p/lg. They need to be reviewed on an ongoing basis (including observations and day-to-day interactions) based on the legal situation and well-being of the minor and their p/lg.
3. The BIOC are to be determined on a case-by-case basis taking all relevant information related to the minor's situation into account.
4. A copy of the BIOC interview form (drafted for trial period) shall be provided to the p/lg and as appropriate to the IRB designated representative, child advocate, private counsel and Child Protection Services.
5. On the issue of handcuffing, please refer to section 10.4, points a to c.
6. There should be an assessment by a provincial authority that considers the child's welfare and the BIOC as applicable.

8. FAMILY UNITY

1. Every effort must be made to preserve the family unit for overall well-being and continuity of care.

2. Families must be released, with or without conditions, to the greatest extent possible. Where unconditional release is not possible, an ATD or AAM should be used.
    a) When p/lg are detained, and public safety (i.e. flight risk, section R245, and danger to the public, section R246) and national security are not an issue, officers must make every effort to find an appropriate ATD or AAM.
    b) When public safety (i.e. flight risk, section R245, and danger to the public, section R246) and/or national security are an issue, every effort shall be made to find an ATD or AAM that sufficiently mitigates the concerns.

Below are possible scenarios that may be encountered by CBSA officers:

> Scenario 1 – When removal is not or cannot be scheduled within seven days, detention must be avoided and the family must be released using an ATD to the greatest extent possible.
>
> Scenario 2 – May detain one parent and release the other with the minor. This may be considered when one p/lg is a danger to the public or a security concern such that an ATD for both parents is not appropriate.

3. Though it is crucial to maintain the family unit, there may be exceptional circumstances where it is not possible. When an ATD is not appropriate, CBSA officers shall work with the p/lg to find a solution for the temporary care of the minor, such as an AAM, if this is in the BIOC. Contact information of the organization and/or person charged with temporary care of the minor must be indicated in the minor's paper file as well as the AAM process that must be created in the National Case Management System (NCMS). Subject to their level of comprehension, the minor should be given contact information for Legal Aid and a Provincial Child Advocate (where available).

    Below are additional scenarios that may be encountered by CBSA officers:

> Scenario 1 – When one p/lg is deemed appropriate for release, while the other is not, the minor will join the released p/lg if this is in the BIOC.
>
> Scenario 2 – When neither p/lg is deemed appropriate for release on an ATD, the minor may be released upon the p/lg's written consent on an AAM (e.g. relative, trusted friend/community member) or housed at an IHC with their detained p/lg if this is in the BIOC.
>
> Scenario 3 – When neither p/lg is deemed appropriate for release and a relative or trusted friend/community member is not available to support the custody of the minor, the officer shall contact Child Protection Services for advice on the temporary care of the minor until one detained p/lg is released, or the minor shall accompany their p/lg at an IHC (where available) if it is in the BIOC.
>
> Scenario 4 – Officers may detain the p/lg and house the minor at an IHC if removal is scheduled within seven days (where travel documents are in order) and release is not a viable option (e.g. historic, consistent and willful breaches of conditions or violations of IRPA or IRPR).

4. If a minor is separated from their family for custodial placement through an AAM, access to the p/lg must be facilitated. The CBSA officer must inform the minor of the steps being taken, unless

the provision of the information is contrary to the BIOC and compromises the safety and well-being of the minor.

9. CHILD PROTECTION SERVICES (CPS)

1. CPS are responsible for the safety, well-being and familial stability of children, which may involve investigations into abuse or neglect of children (see Annex C). They can also connect families to community resources to address issues like mental health, settlement and temporary accommodations and provide guidance and advice on the BIOC. Most CBOs are also equipped to provide these services.
2. CBSA officers shall consult the p/lg prior to contacting CPS unless the situation falls within the duty to report under child welfare legislation. Accordingly, CBSA officers must contact CPS if abuse, neglect or other serious concerns are suspected or identified in the BIOC interview or any time thereafter. Additional reasons to contact CPS are as follows:
    a) trauma experienced by a minor;
    b) safety issues identified while in custody due to abuse and/or neglect by p/lg; and
    c) parents may be facing criminal charges and, due to the nature of the charges, may be separated from their children (i.e. incarcerated in a separate institution).

10. ARREST AND DETENTION OF A MINOR

1. Please refer to ENF 20 for details on arrest and detention. Regardless of the age of the person arrested, Notice of Arrest (report), Order for Detention (form), National Risk Assessment for Detention and Detainee Medical Needs forms must be completed for a detention made under section A55. Officers must clearly articulate reasons and grounds for arrest and detention when completing the documents and be mindful of the utmost importance of taking concise and complete notes supporting their decisions and actions.
2. The CBSA will continue to conduct the BIOC interview to inform the position taken at IRB reviews until release.
3. When possible, the initial decision maker who decides to arrest or detain the minor shall take the lead in the active case management of the minor's file throughout the immigration enforcement stream for the best case oversight.
4. CBSA officers must ensure the security, safety, and protection of the minor under arrest/detention. In addition,
    a) minors shall not be handcuffed **except in extreme circumstances**. Officers must assess the risk and act on reasonable grounds when deciding to handcuff a minor. Extreme circumstances are limited to danger to the public, threat posed to officers or the public and self-harm;
    b) CBSA officers will not handcuff detained p/lg in front of their children, other than under extreme circumstances (as above) or if they have a violent criminal past; and
    c) CBSA officers will not conduct personal searches or frisking of a detained p/lg in front of a minor other than under extreme circumstances (as above), or if they have a violent criminal past. Officers must make every effort to conduct searches outside the view of the minor, unless doing so would cause more distress to the child.

11. UNACCOMPANIED MINORS

1. Unaccompanied minors shall never be detained or housed at an IHC unless it is for an operational reason (e.g. POE arrival at 3:00 am, outside of normal business hours) and an ATD or AAM cannot be found. In the event that an unaccompanied minor is held at an IHC for more than 24 hours, a CBSA officer must conduct a BIOC interview for the purpose of release. Unaccompanied minors shall also have heightened supervision (IHC staff) and access to guards, NGO staff and other supports as necessary.
2. The CBSA will notify the CRC as soon as possible; refer to section 15.4.
3. If the presence of smugglers or traffickers is a concern, the matter must be discussed with CPS to ensure that adequate protection is provided (refer to Annex C).
4. In most cases, unaccompanied minors are to be released in the care of a CBO or CPS (e.g. local Children's Aid Society as appropriate) if they do not have a relative or trusted community link. While an unaccompanied minor is in their custody, the organization will make every effort to ensure that the minor meets the CBSA's reporting requirements. Contact information of the organization, relative or trusted community member charged with temporary care of the minor or an IRB designated representative or lawyer must be indicated in the minor's file and in NCMS via the AAM process.

12. HOUSING – ACCOMPANIED MINORS

1. Accompanied minors shall be housed at an IHC (where available) only if it has been deemed to be in the BIOC, and families must not be separated within the detention facility when possible. The CBSA officer must note the ATDs considered for one or both of the p/lg before concluding that housing was absolutely necessary for the minor and/or family unity.
2. The CBSA officer must explain to the p/lg that they may accept or refuse housing and that their decision will not affect their immigration case; interpreter services must be offered to the p/lg to enable clarity and full comprehension of the discussion. A CBSA supervisor or superintendent and the minor's p/lg must provide their written consent prior to housing at an IHC (consult local IHC intake forms).
3. Documentation and system data entry
   Documentation must be completed for accompanied minors who are foreign nationals, permanent residents or Canadian citizens.
   - In NCMS, create a **Housed Process** in order to add notes on the minor's health condition and/or medical needs, including dietary.
   - Minors housed or placed in an AAM must be given a UCI to enable monitoring and tracking in the immigration detention system.
4. A p/lg may withdraw their consent at any time by informing the CBSA in writing. The CBSA may also withdraw their consent under extreme circumstances, such as:
   - inability of the p/lg to care for and ensure control of the minor, resulting in harm to the minor and subject to duty of care referral under child welfare legislation; or
   - an AAM becoming available for the accompanied the minor, even after the 48-hour detention review.
5. If a CBSA officer considers withdrawing consent, they must justify this in writing, discuss with the p/lg, and give them an opportunity to remedy the circumstances.
6. CBSA officers shall conduct a weekly case review to reassess ATDs/AAMs and the BIOC of accompanied minors.

13. SERVICES IN AN IHC

In accordance with international standards, IHCs offer a secure and sanitary environment, proper nutrition, access to fresh air, access to healthcare services (including psychology and psychiatric supports) and recreation. Furthermore,

1. Minors shall be housed with both p/lg to the greatest extent possible in order to the preserve family unit.
2. The IHC shall adhere to national Standard Operating Procedures for accompanied and unaccompanied minors, and the IHC manager will be responsible for verifying that the national procedures are adhered to when a minor has been admitted for detention or housing.
3. By provincial laws, minors must go to school starting at the age of five or six and until they are between 16 and 18, depending on the province or territory. Qualified teachers will provide in-class education for minors who are at an IHC after seven days and until they are released.

14. TRANSPORTATION AND TRAVEL

The CBSA Enforcement Manual, Part 6, Chapter 8, Vehicular Transport of Persons under Arrest or Detention, is applicable to detained or housed minors. It guarantees the safety and security of individuals in CBSA custody. Operational Bulletin PRG-2015-34 Transportation of Non-Detained Persons in Agency Vehicles while Administering CBSA Program Legislation is also relevant. The p/lg is responsible for the care and control of their children; therefore, they must be kept with them at all times, including situations when the p/lg or minor must leave the IHC for various reasons: detention review, medical appointment, court proceeding, immigration examination, etc. NOTE: Section 10 applies to this section.

15. REPORTING AND NOTIFICATION

1. **Operational Bulletin OPS-2017-03**
   All situations involving the detention, housing or separation of the family unit must be reported immediately to the Border Operations Centre (BOC) as a significant event under the incident reporting criteria “Child Welfare”.
   a) The regional Single Reporting Tool (SRT) Operational Bulletin OPS-2017-03 to the BOC must contain the following information regarding the case:
      i. tombstone data for the minor involved (UCI, age, gender, citizenship);
      ii. UCI for accompanying parent or guardian (if minor is accompanied); and
      iii. detailed synopsis of the case, including whether the minor was accompanied or unaccompanied, detained (and grounds for detention), housed (and housed with whom), or separated (including AAM) from a detained p/lg and the detention facility where they are held.
   b) The SRT must contain the information that was considered during the decision-making process:
      - how the BIOC was assessed and what outcome of the assessment was (this is relevant for all instances involving minors, whether minors are detained, housed or separated from their detained p/lg).
   c) The SRT must also contain the information considered regarding actions taken to mitigate detention of minors or their p/lg:
      - how and which ATDs and AAMs were considered in order to minimize the detention or housing of children or the separation of children from their p/lg.
   d) Once the BIOC has been conducted and ATDs and AAMs have been considered, and a minor is detained or housed in a detention facility or separated from a detained p/lg, the CBSA officer (decision maker) must report the case to the BOC as soon as possible.

e) Superintendents and managers shall ensure that a notification is sent to the BOC as outlined above.

2. **Operational Bulletin PRG-2019-05**
Officers are required to record information in the NCMS using the "Alternative Arrangement for Minor" process. For data entry procedures on an alternative arrangement and associate accompanying party, please refer to the Operational Bulletin and Standard Operating Procedures. When a minor is placed in an alternative arrangement **directly from the POE**, it is imperative that the case details be sent to the office responsible for the NCMS data entry. For statistical purposes, information (e.g. new processes and updates) must be entered in a timely manner.

3. Aggregate reporting on minors will be part of the quarterly online publication of detention program statistics. It will also include the separation of minors.

4. Upon admission of an unaccompanied minor at an IHC, the CBSA officer will notify the CRC in writing as soon as possible by sending an email message to IDMP@REDCROSS.CA. In the subject line, indicate "Unaccompanied Minor" and the facility or location where the minor is being held. The CRC must inform the CBSA immediately if they intend to conduct a monitoring visit with the minor in order for the CBSA to obtain the required consent from CPS (as the authority for minors) in a timely manner for the visit.

Annex C – Child Protection Services and Family Centres

- Atlantic
  - Nova Scotia Community Services Offices with Child Welfare Services (17 district offices)
  - New Brunswick Child Protection, 1-888-992-2873 or after-hours emergency services at 1-800-442-9799 (8 regional sub-districts)
  - Newfoundland and Labrador Child Protection Services (4 regional health authorities)

- Quebec
  - Association des centres jeunesse du Québec (16 administrative regions)
  - Centre jeunesse de Laval, 450-975-4000
  - Centre jeunesse de Montréal, 514-896-3100
  - Batshaw Youth and Family Centres (Montréal), 514-935-6196
  - Centre jeunesse de l'Estrie, 819-566-4121
  - Centre jeunesse de la Montérégie, 450-679-0140
  - Programme régional d'accueil et d'intégration des demandeurs d'asile (PRAIDA), 514-731-8531

- Northern Ontario
  - Ontario Association of Children's Aid Societies (Ottawa, Cornwall, Lansdowne and Prescott)
  - Ontario Association of Children's Aid Societies (Thunder Bay, Sault Ste. Marie and Fort Francis)

- Greater Toronto Area
  - Ontario Association of Children's Aid Societies (47 provincial societies)
  - Children's Aid Society of Toronto, 416-924-4640
  - Catholic Children's Aid Society of Toronto, 416-395-1500
  - Jewish Family and Child (Toronto), 416-638-7800
  - Peel Children's Aid Society, 888-700-0996

- Southern Ontario
  - Chatham–Kent Children's Services, 519-352-0440 (Chatham, Blenheim, Bothwell, Chatham, Chatham–Kent, Dresden, Erie Beach, Erieau, Highgate, Ridgetown, Thamesville, Tilbury, Wallaceburg, Wheatley)
  - Children's Aid Society of London and Middlesex, 888-661-6167 (Adelaide, Ailsa Craig, Caradoc, East Williams, Ekfrid, Glencoe, London, Lucan Biddulph, McGillivray, Metcalfe, Middlesex, Middlesex Centre, Mosa, Newbury, North Dorchester, Parkhill, Strathroy, Wardsville, West Nissouri, West Williams)
  - Children's Aid Society of Oxford County, 519-539-6176 (Blandford-Blenheim, East Zorra-Tavistock, Ingersoll, Norwich, Oxford, South-West Oxford, Tillsonburg, Woodstock, Zorra)
  - Family and Children's Services Niagara, 888-937-7731 (Fort Erie, Grimsby, Lincoln, Niagara, Niagara Falls, Niagara-on-the-Lake, Pelham, Port Colborne, St. Catharines, Thorold, Wainfleet, Welland, West Lincoln)
  - Family and Children's Services of St. Thomas and Elgin County, 519-631-1492 (Aylmer, Bayham, Belmont, Central Elgin, Dutton Dunwich, Elgin, Malahide, Port Stanley, Southwold, St. Thomas, Vienna, West Elgin, West Lorne)

- Sarnia-Lambton Children's Aid Society, 519-336-0623 (Alvinston, Arkona, Bosanquet, Brooke, Dawn-Euphemia, Enniskillen, Forest, Grand Bend, Lambton, Mooretown, Oil Springs, Petrolia, Plympton, Point Edward, Sarnia, Sombra, Thedford, Warwick, Wyoming)
- The Children's Aid Society of Haldimand and Norfolk, 519-587-5437 / 888-227-5437 (Delhi, Dunnville, Haldimand, Haldimand-Norfolk, Nanticoke, Norfolk, Simcoe, Townsend)
- Windsor-Essex Children's Aid Society, 800-265-5609 (Amherstburg, Essex, Kingsville, Lakeshore, LaSalle, Leamington, Pelee Island, Tecumseh, Windsor)

- Prairies
  - Alberta Children's Services, 1-800-387-5437 (several service delivery locations)
  - Saskatchewan Social Services Offices (several locations), after-hours crisis centres: Prince Albert – 306-764-1011, Saskatoon – 306-933-6200, Regina – 306-569-2724
  - Manitoba Child and Family Services, 1-866-345-9241 (several Designated Intake Agencies)

- Pacific
  - Ministry of Children and Family Development (13 offices)
  - Ministry of Children and Family Development (Vancouver), 604-660-4927 or 310-1234

Annex D – Provincial Definitions of a Minor

In Canada, the definition of a minor child varies by province as indicated in the table below.

Province	Definition of minor child	Definition of minor for child protection purposes
British Columbia	Person under 19 years	Same
Alberta	Person under 18 years	Same
Saskatchewan	Unmarried person under 16 years	Same
Manitoba	Person under 18 years	Same
Ontario	Person under 18 years	"child" means a person under the age of 16
Quebec	Person under 18 years	Same
Nova Scotia	Person under 19 years	"child" means a person under the age of 16
New Brunswick	Person under 19 years	"child" means a person under the age of 16
Newfoundland	Person under 16 years (youth defined as a person who is 16 years or older, but under the age of 18)	Same
Prince Edward Island	Person under 18 years	Same
Northwest Territories	Person under 19 years	"child" means a person under the age of 16
Yukon	Person under 19 years	"child" means a person under the age of 16
Nunavut	Person under 19 years	"child" means a person under the age of 16

ENF 34

Alternatives to Detention Program

ENF 34 Alternatives to Detention Program

CONTENTS

1. Updates to chapter

1.1. Listing by date

- 22 June 2018 – Initial version

2. What this chapter is about

This chapter describes the elements of the Alternatives to Detention (ATD) Program and provides information and guidance on how the tools available under the ATD Program should be used.

This chapter is meant to be read in conjunction with

- ENF 3 Admissibility, hearings and detention review proceedings
- ENF 7 Investigations and arrests
- ENF 8 Deposits and guarantees
- ENF 20 Detentions
- ENF 22 Persons serving a sentence

3. Definitions and specific terminology

Alternative to detention	An alternative to detention is any condition that may be imposed on an individual to offset a risk they represent to the enforcement objectives and the mandate of the Canada Border Services Agency (CBSA).
Deposit	See ENF 8 Deposits and guarantees.
Community case management and supervision (CCMS)	CCMS promotes detention avoidance or detention release for people who lack a bondsperson or require support in addition to a bondsperson to mitigate risk upon release into the community. The CBSA has entered into contracted partnerships with third-party service providers to support individuals in the community.
Review	A review of the available information to determine the circumstances of an individual's failure to comply with conditions, also called a desk investigation, may involve phoning the individual and other parties as well as conducting system and database searches.
Detention review	See ENF 3 Admissibility, hearings and detention review proceedings.
Electronic monitoring (EM)	EM is limited to a portion of select higher-risk individuals who are monitored through a global positioning system (GPS), radio-frequency (RF) system or both. The EM monitoring system is built on real-time location data, which is collected and analysed in a central facility and reported to regional staff to pursue for enforcement, as appropriate. EM is available in the Greater Toronto Area (GTA) only.

Case closure	Case closure happens when an ATD Program individual no longer requires CCMS or electronic supervision (for example, an improvement to the individual's risk level, a change in circumstances where the individual has other support mechanisms, the individual has been compliant after already being de-escalated or the individual is removed from the country).
In-person reporting	In-person reporting is a condition imposed on individuals where they are required to physically appear at a specified place and make themselves known to an official. Usually, this means attending a CBSA inland enforcement office and checking in with a CBSA staff member, who verifies the individual's identity and records their attendance in the system.
Location-based service	Location-based service uses GPS data to identify the location of a cellular telephone. Location information is provided by a third party and is used by the Voice Reporting System (VRS) to record the location of individuals when they call in, as required.
Guarantee	See ENF 8 Deposits and guarantees.
Service provider	Service providers provide CCMS services on behalf of the CBSA to eligible individuals and regularly provide information to the CBSA on CCMS participants.
Voice reporting	Voice reporting is an imposed condition whereby the individual is required to call an automated system at regular intervals. The individual's identity is authenticated on each call by comparing a biometric sample of their voice with a sample given at enrolment. Individuals reporting by cellular telephone may have their GPS location recorded for each call. Additional conditions, such as the time and place from which the call must be made, may also be imposed.
Voice Reporting System (VRS)	The VRS is an automated system that authenticates an individual's identity by using voice biometrics during a telephone call to an automated system.
Withdrawal of supervision	Withdrawal of supervision is a recommendation made by the CCMS service provider to the CBSA when the provider is of the opinion that the individual can no longer be managed in the community (that is, when the individual is no longer willing to comply with the requirements of the program).

4. Description of the ATD program

The ATD Program encompasses all conditions that can be imposed to reduce the risk posed by an individual in relation to the enforcement objectives of the Immigration and Refugee Protection Act (IRPA) and the CBSA's mandate. Prior to the launch of the expanded ATD Program, the nationally available conditions were general conditions, deposits, guarantees and in-person reporting.

The expanded ATD Program was implemented on June 22, 2018 and is intended to augment the existing options that were available to the CBSA and the Immigration and Refugee Board (IRB) to manage individuals subject to immigration detention. The ATD Program provides officers with an expanded set of tools and programs that enable them to manage individuals released into the community more effectively.

The expanded ATD Program is a mechanism to protect the integrity of Canada's immigration detention system by ensuring individuals are treated fairly and in accordance with the overarching principle that detention is a measure of last resort, and the decision to detain or release an individual is based on the risk they present related to the objectives of the IRPA and the enforcement mandate of the CBSA.

The expanded ATD Program provides one new community supervision tool and two new electronic supervision tools. To manage the application and administration of these new tools, a new position, called the community liaison officer, was created in each region.

Below is a description of all the conditions that are part of the expanded ATD Program as well as the role of the community liaison officer.

4.1. General conditions

General conditions are the conditions that are commonly imposed by Immigration, Refugees and Citizenship Canada (IRCC), the CBSA and the IRB for most individuals subject to a removal order. The intent of these conditions is to require individuals to keep the CBSA apprised of events in the individual's life that are relevant to the CBSA's mandate and encourage behaviour that supports the objectives of the IRPA.

The following are commonly imposed conditions that are appropriate in a majority of cases:

Condition	Risk mitigation
Keep the CBSA updated with a current address	A current address allows the CBSA to locate the individual if they fail to comply with conditions or requirements, including removal. A current address is likely to provide investigative leads if the individual fails to comply.
Report criminal charges and convictions	Criminal charges and convictions are a good indicator that the individual may be a danger to the public, which is the primary concern for the CBSA. Criminal charges might also lead to an inadmissibility investigation and previously unknown risks of being unlikely to appear.
Co-operate with obtaining an identity or travel document	The lack of an identity or travel document is often the sole impediment to removal for many individuals. Obtaining an identity or travel document can take a long time, and the sooner the process begins, the more likely the timely removal of the person will take place if it becomes necessary.
Other conditions	An officer may impose other conditions that address risk specific to each individual.

4.2. Issuance of deposits and guarantees

Deposits and guarantees provided by people in the community are intended to positively influence an individual to comply and provide support while in the community. Deposits and guarantees are discussed comprehensively in ENF 8 Deposits and guarantees.

4.3. In-person reporting

In-person reporting is intended to keep the individual connected with the CBSA through regular face-to-face interactions. Regular reporting allows the CBSA to obtain updates on information relevant to the mandate of the CBSA and allows the individual to ask questions of the CBSA in relation to their immigration enforcement proceedings.

4.4. Community Case Management and Supervision

Community case management and supervision (CCMS) provides released individuals with services in the community that reduce the risk they pose through case management and pro-social treatment options. CCMS is delivered by existing non-governmental organizations and community organizations contracted by the CBSA to provide these services.

CCMS service providers perform an initial assessment of the individuals referred to them by the CBSA while they are in detention and provide the results of the assessment to the CBSA. If CCMS is imposed as a condition by either the CBSA or the IRB, the CCMS service provider enrols the individual in the appropriate programme and services and monitors the individual as they participate in the program.

CCMS services are primarily focused on reducing the risk of non-compliance associated with physical health, mental health and addiction. Additionally, the CCMS service provider can refer individuals to existing community resources that provide housing and shelter assistance as well as child and family services.

For a limited number of individuals who present a high flight risk or danger to the public, CCMS service providers have community residential facilities that individuals can be released to, under strict conditions and subject to very close monitoring. Individuals released to these facilities are required to reside in the facility, follow facility rules and participate in any programmes deemed necessary to mitigate the risk the individual poses.

CCMS service providers report any violations of conditions to the CBSA, who then make a decision, in consultation with the CCMS service provider, if appropriate, on the most suitable response.

4.4.1. Description of CCMS services

CCMS is intended to address factors that are likely to impact the individual's ability to maintain a stable community living situation. The underlying premise is that an individual who is stable in the community is more likely to comply with imposed IRPA requirements and conditions.

The following services provided by the CCMS service provider assist individuals in becoming and remaining stable in the community:

Service	Description
Case management	Every individual enrolled in CCMS receives case management services. The CCMS service provider performs an assessment to determine the appropriate nature and frequency of case management services. At a minimum, the individual is required to report to the CCMS service provider at regular intervals to update on changes to their living situation, daily activities (such as work and school) and any specific issues that could impact compliance with the imposed conditions.
Links to health support	Individuals who have a serious medical condition that requires significant ongoing treatment may be eligible to receive support from the CCMS service provider in arranging and managing their treatment in the absence of a support system of their own.
Mental health assistance	Individuals with mental health issues that are likely to impact their compliance with conditions may have treatment options available to them that are designed to support and encourage compliance with IRPA requirements and imposed conditions. These services may be provided by out-patient treatment program operators available through the CCMS service provider or subcontracted by the CCMS service provider.
Addiction and substance abuse counselling and support	Individuals whose ability to comply with conditions is impacted by addiction may be eligible to participate in treatment programs designed to minimize the impact of their addiction and assist with maintaining stability in the community. These outcomes are expected to support the individual's ability to comply with imposed conditions.
Information regarding housing and employment	Individuals who are eligible to work in Canada may be eligible to receive assistance from the CCMS service provider in accessing local employment resources. Employment provides stability in the community as well as a legitimate source of funds to live on, both of which contribute to the individual being more likely to comply with conditions. Individuals who are or anticipate having difficulty finding a stable residence may be eligible to receive assistance from the CCMS service provider in accessing local housing resources. A stable residential address is one of the strongest contributors to an individual complying with conditions.
Information regarding child-related or family needs	Individuals with child-care needs may be eligible to receive assistance from the CCMS service provider in accessing local resources. A stable community and family situation both contribute to an increased likelihood of compliance.
Mandatory residency	High-risk individuals who require close supervision may be eligible to be placed into residential facilities operated by the CCMS service provider. These facilities closely monitor the individual's behavior and report any concerns or violations of curfews or other conditions to the CBSA

	immediately. Individuals may receive treatment services in some of these facilities and be escorted to appointments and treatment programs by the CCMS service provider when necessary.

4.4.2. Referral to the CCMS service provider

At any time from initial contact with an individual through to dealing with individuals who have been detained for a lengthy time, an officer, including the arresting officer, the hearings officer and the community liaison officer, may form the opinion that the risk the individual presents could be reduced or offset by one of the services available through the CCMS service provider. When the officer forms such an opinion, they may send a referral for assessment to the CCMS service provider.

The decision to refer an individual for assessment by the CCMS service provider should take into account these factors:

- Expected removal timeline
    - CCMS is intended to provide risk mitigation over a longer time frame, as part of a case management process. If the individual is being removed within a few weeks or less, CCMS is likely not appropriate, as the assessment and enrolment process may take some time.
- Stability of the individual in detention
    - In the event an individual possesses medical or mental health issues that have contributed to their detention, these issues must be stabilized while in detention to a point that the individual can effectively participate in the assessment process.
- Risk level of the individual
    - If the risk level of the individual is so high that release on even the strictest conditions is only plausible far into the future, an assessment should not be requested. The relevance of an assessment by the CCMS service provider diminishes over time and should be done only when there is a realistic possibility of release.

In most instances, the decision to refer an individual for assessment rests solely with the CBSA. Referrals to the CCMS program may also be initiated through outside parties, such as the individual themselves, counsel or another party associated with the individual. These may be directed to the CBSA for referral or to the CCMS provider themselves. In most instances, the CBSA, in conjunction with the CCMS service provider, reviews the request and takes appropriate action. Depending on the particular circumstances of the case, the CCMS provider may undertake an initial assessment of an outside referral following notification to the CBSA. If the IRB requests that an individual be referred for assessment, the CBSA makes the referral, in consultation with the IRB.

In the instance of a CBSA referral, the referral includes all the information the CBSA has available that may be required to assist the CCMS service provider in assessing the individual for services and treatment that could mitigate their risks.

4.4.3. Assessment by the CCMS service provider

Upon receipt of a referral, the CCMS service provider performs an initial review of the information and contacts the community liaison officer with a plan to complete the assessment. When relevant, the community liaison officer assists the CCMS service provider in gathering additional information that may be required and in setting up interviews with the individual.

The CCMS service provider interviews the individual in person or remotely, if necessary, using the services of an interpreter, as required. The service provider provides the results of the assessment to the CBSA as soon as it is completed and within timelines outlined in the CCMS contract.

The completed assessment is reviewed by the CBSA and used in a subsequent detention review by the hearings officer, as appropriate. The assessment provides the CBSA with sufficient information related to a proposed release plan for presentation to the IRB. If the assessment is undertaken in advance of the 48 hour detention review, the CBSA has the authority to release the individual, according to the release plan agreed to with the CCMS service provider.

4.4.4. Enrolment with the CCMS service provider

Once enrolment with a CCMS service provider has been imposed as a condition of release by the CBSA or the IRB, the community liaison officer makes arrangements with the CCMS service provider to enrol the individual. In most cases, the individual is released from the detention facility with a direction to report to the CCMS service provider at a scheduled time.

High-risk individuals may be transported to the CCMS service provider office or residential facility by the CBSA or contracted guard service for enrolment, when deemed necessary. The CBSA or the contracted guard service can only transport individuals who have their release conditions explicitly worded that release is contingent upon enrolment.

At the enrolment appointment, the CCMS case worker reviews the release conditions imposed and the particulars of the individual's case to develop an appropriate program of reporting and community services that collectively mitigates risk factors present. They further explain what is required of the individual to participate in the CCMS program. The specific services and programs that the individual is subject to, as part of their participation in the CCMS program, are documented within the Agreement of Supervision or the Supervision Contract initiated between the CCMS service provider and the individual. This document is sent to the CBSA to be placed on the file, in accordance with the CCMS contract. Any relevant information is put into the National Case Management System (NCMS) by the community liaison officer.

4.4.5. Monitoring and enforcement by CCMS service provider and CBSA

Once the individual has been enrolled into the CCMS program, the CCMS service provider has regular and ongoing interactions with the individual to ensure that the individual is abiding by the requirements of the program and their release conditions. Over the course of their participation in the program, the CCMS service provider, in accordance with the parameters of the contract,

provides the CBSA with any new information received from the individual that may be of interest to the CBSA in the ongoing administration of the program.

On a regular schedule, the CCMS service provider reviews the services the individual is enrolled in and provides the community liaison officer with a recommendation to maintain the current services or modify them, in accordance with the CCMS contract. In general, individuals enrolled with the CCMS service provider are expected to gradually require less support over time from the CCMS service provider in the community, to the point where they can remain stable in the community without support from the CCMS service provider.

If the CCMS service provider becomes aware that the individual is not abiding by the requirements of the CCMS program or other conditions of their release, the CCMS service provider should contact the CBSA with the details. The CBSA, in conjunction with the service provider, may have a discussion to determine the appropriate response. Depending on the nature and severity of the violation, the history of the individual and the risk level of the individual, more restrictive conditions may be imposed, withdrawal of supervision may be undertaken or the case may be referred for investigation and further enforcement action.

4.5. Voice reporting

Voice reporting (VR) allows individuals to report the CBSA by phoning an automated system that verifies their identity by using their voice. The results of VR are recorded in the NCMS in real time.

Individuals can enrol and report using a landline or a cellular telephone. Recognizing that most individuals possess cellular telephones, it is preferred that enrolment be initiated by using the individual's cellular telephone. This enables more effective management of the individual on the VR program, with the overall objective to promote compliance. Regular reminder notifications and other direct communications are only possible through the use of short message service (SMS) text messaging. Individuals reporting by landline have the address from which they are calling recorded by the CBSA. Individuals reporting by cellular telephone have their location captured with GPS, which enables the CBSA to confirm the location of the call.

VR most significantly offsets the risk of an individual not appearing by maintaining a relationship with the individual, while they are the subject to immigration enforcement proceedings. It is an effective alternative to in-person reporting, particularly for individuals located in remote areas or who reside in an area not easily accessible to a CBSA inland enforcement office.

4.5.1. Cellular telephone reporting

The individual must use a cellular telephone from one of the below providers. Any provider outside of those listed below cannot be accepted at this time. This list should be updated when new cellular telephone providers are added.

Approved telephone providers

a. Telus and sub-brands – Telus, Koodo

b. Bell and sub-brands – Bell, Virgin Mobile
c. Rogers and sub-brands – Rogers, Fido

Up-to-date information may also be found on Atlas.

Officers and the IRB can impose additional conditions related to VR, if necessary, to offset the risk posed by the individual. The following is a list of some VR-related conditions that may be appropriate for select medium and high risk individuals:

1. report using the VR System from a specific location and at a specific time
2. not be in possession of or use a cellular telephone, other than the one used to report to the CBSA
3. carry the cellular telephone used to report to the CBSA at all times and answer any call from the CBSA or return a call in response to a message left within the timeframe assigned by the officer.

Individuals who report via a cellular telephone are sent a reminder SMS text message on the morning they are required to report. Individuals who fail to report are sent an SMS text message shortly after midnight the next morning, informing them of the violation and directing them to report using the VR System immediately.

4.5.2. Landline

While cellular telephone use for VR is preferred, the CBSA may allow individuals to report using a landline telephone. Individuals must have a landline telephone that is directly connected to the public telephone network. Voice over Internet Protocol (VOIP) or Internet telephones are not permitted. Individuals must produce a telephone bill from a telephone service provider that lists their name, address and telephone number. The name on the telephone bill must match the name of the individual being enrolled in the program, a family member or a guarantor. The address on the telephone bill must match the individual's residential address that is registered with the CBSA.

If the individual is moving, they must provide the CBSA with documentary proof of the new address of service for the landline telephone and the new telephone number, if it is changing, before moving. This requirement is in addition to any other address notification requirements imposed by the CBSA, per case-specific conditions.

In instances where an individual may be subject to other conditions, such as mandatory residency, or may reside in a facility that is not a residential address (such as a shelter), the CBSA officer may elect to allow the individual to report using the registered telephone of the service provider. Advance consultation with the facility may be necessary.

4.5.3. Location-based services

Location-based services are also called geolocation, which refers to the ability to locate the cellular telephone the individual has used to enrol and report to the VR System. It is the policy

of the CBSA that the location of the cellular telephone **may be requested only in the following four circumstances**:

1. when the individual contacts the CBSA VR System, using their registered telephone number
2. when the VR System contacts the individual by using their registered phone number for the purpose of performing a call back, as required by program guidelines
3. when the VR System contacts the individual by using their registered telephone number for the purpose of sending them an SMS text message notification that they have failed to telephone report, as required by program guidelines
4. when the individual fails to comply with conditions imposed by the CBSA or IRB, and the CBSA has opened an investigation into the individual's failure to comply; in such instances, an officer may use the VR System to determine the location of the individual's registered cellular telephone after obtaining supervisor or manager approval

To maintain the integrity of the VR Program, geolocation should be used for all individuals reporting by cellular telephone, unless there are unusual circumstances that would make the sharing of their location at the time of their reporting to the CBSA inappropriate.

4.5.4. Enrolment

Once an individual has the VR condition imposed by the IRB or CBSA, the enrolment process is initiated by regional CBSA staff. Enrolment can be done as soon as the condition is imposed, or the individual may be scheduled to return at a later date for enrolment, depending on the circumstances.

Enrolling in the VR System takes approximately 30 minutes and is usually done in a CBSA inland enforcement office, in a quiet, interview-type setting. Enrolment is possible in alternative sites, if necessary, due to geographic or other logistical factors.

Officers use GCMS, NCMS and the VR System to enter information and move the individual through the enrolment process. Individuals call a toll-free number and follow the voice prompts and written instructions provided to them by the CBSA officer to record five samples of their voice print, repeating the same phrase each time. The phrase is standard for all individuals enrolled in the VR System, and it has been translated into 40 languages, enabling individuals to report in their primary language of choice.

Instructions and prompts in the VR System are in English and French only, so an interpreter may be necessary to assist the individual in following enrolment instructions.

When an individual is successfully enrolled, they are provided with detailed written instructions on how to report, tips and troubleshooting, and contact information for assistance.

4.5.5. Reporting

Once enrolled, individuals report on a schedule determined by the CBSA or IRB by calling a toll-free number and following the voice prompts to say the standard, pre-recorded script three times. The VR System generates a match score by comparing the individual reporting event to the pre-recorded script captured at enrolment. All results are recorded in the VR System and transmitted to NCMS for review by a CBSA officer, if necessary. The reporting process takes approximately 90 seconds.

To support individuals with compliance with their reporting schedule, a reminder SMS text message is sent to all individuals who report by cellular telephone on the morning they are required to report.

4.5.6. Monitoring

The monitoring phase is undertaken with the objective of ensuring that all individuals enrolled in the VR System are reporting in accordance with their prescribed conditions and time of reporting. It facilitates early intervention to determine if any violation of reporting using the VR System was intentional on the part of the individual and if it should be referred to the region for further investigation.

A new unit, called the Alternatives to Detention Monitoring Centre (ATDMC), has been created to conduct an initial case review of any individual who fails to report by telephone, as directed, or of any file that has been flagged as questionable. To ensure program integrity and effectiveness of the VR System even further, the ATDMC may randomly review individual reporting events to ensure consistency of reporting, comparison matching to pre-recorded voice prints and any other case analysis that they deem necessary to ensure effective program management.

In the event of a failure to report on the part of an individual, the VR System sends the individual a reminder SMS text message shortly after midnight the day after their scheduled reporting event to remind the individual to report immediately to the CBSA VR System. These files are flagged for further follow up to the ATDMC. If the file is not resolved, following the reminder SMS text, the ATDMC performs a review of the violation. If the ATDMC is unable to reach the individual or is not satisfied that the individual will report in the future, the case is referred to the region. If the ATDMC is satisfied the individual will report in the future, they should reactivate the individual in the VR System, enabling reporting to continue. All functions are undertaken in accordance with ATDMC policies.

In the event of a questionable reporting event, the ATDMC may undertake an assessment of the reporting event by comparing the pre-recorded script captured at the time of enrolment to the reporting script that was recorded at the time of the reporting event. If the ATDMC is not satisfied with their assessment, the file may be referred to the region.

The ATDMC is located in Ottawa and is staffed by ATD monitoring officers. ATD monitoring officers determine the nature and severity of each violation by using all available systems and

by attempting to contact the individual or other people associated with the individual who is enrolled in VR, to resolve any issues.

The results of this review are forwarded to the region on a schedule determined by the priority the region has assigned to each individual case.

For further information on the ATDMC, see the ATDMC standard operating procedures.

4.5.7. Enforcement

When the region receives the results of a review from the ATDMC, they assess and action it, as appropriate, based on the individual's determined risk level and any case-specific factors.

According to program guidelines and policies, for individuals enrolled in VR, officers may request to have the location of an individual's telephone determined by the VR System without notifying the individual only if the individual has violated conditions imposed under the IRPA, and the CBSA is investigating the violation. Officers may only collect this information if it is necessary for the investigation of the violation of conditions.

Officers are required to confirm that the above requirements have been met and that a supervisor or manager has been briefed on the investigation. The supervisor or manager must provide concurrence with the officer's decision to determine the location of the individual's telephone. A written record of the approval, including the justification of the necessity, is required to be placed on the file. If exigent circumstances allow for only verbal approval, a written record of the approval must be generated as soon as practicable and placed on the individual's file. Audits of the collection of location information using this method are performed on a regular basis.

4.6. Electronic monitoring

Electronic monitoring (EM) is offered through a relationship with Correctional Service Canada (CSC) and is executed only in the Greater Toronto Area region as a pilot project, until March 31, 2020. The success of the pilot will be assessed before March 31, 2020, and a decision to continue, discontinue or expand the program will be made.

EM involves attaching a bracelet-type device to the individual's ankle that allows the location of the individual to be continuously monitored while they are released in the community. The bracelet is securely attached and should only be removed in cases of medical necessity, unless otherwise directed by the CBSA or IRB.

EM is intended to be used in conjunction with CCMS, a deposit or guarantee, or both for individuals who present a high risk if released into the community but whose predicted length of detention favours release. Individuals on EM usually have restrictions on places and times that they can be in the community. Compliance with these conditions is monitored at all times by staff in the Monitoring Centre, operated by CSC. Any violation of EM conditions is reported immediately to the CBSA for review and action, as required.

4.6.1. Enrolment

Once an individual has an EM condition imposed by the IRB or CBSA, the enrolment process is initiated by regional CBSA staff. EM enrolment is a two-step process: installation of the ankle monitor on the individual and installation of the Radio Frequency (RF) modem in the individual's residence. The installation of the EM monitoring device takes approximately 60 minutes and is done by a CBSA inland enforcement officer.

Before the individual's official release from detention, the officer performs an assessment of the proposed residence and tests the functioning of the RF unit and the ankle monitor at the proposed residence by verifying the operation of the units with the CSC Monitoring Centre. After verifying the equipment is functioning correctly, officers explain to the individual the terms and conditions of their participation on the EM program and install the ankle monitor. The officer subsequently transports the individual to their residence and releases them from detention.

Enrolment in the EM program is undertaken in English and French only, so an interpreter may be necessary to assist the individual in following enrolment instructions.

When an individual is successfully enrolled, they are provided with detailed written instructions on how to remain compliant with EM program requirements and the particular conditions associated with their participation on the program. They are also provided with a handbook that provides tips, troubleshooting and contact information for assistance.

4.6.2. Monitoring and enforcement

Individuals on EM are monitored by the CSC Monitoring Centre, in conjunction with the CBSA. Any breach or non-compliance is referred to the region for immediate action. All functions related to monitoring and enforcement are undertaken in accordance with EM policies and guidelines and are governed by the established memorandum of understanding between both departments.

5. Roles and responsibilities

5.1. Community liaison officer

The community liaison officer position was created to manage the ongoing administration and use of the VR, CCMS and EM programs in the regions. All CBSA regions have dedicated community liaison officers to ensure the effective and ongoing use of alternatives to detention, in accordance with program objectives, national policies and guidelines. Community liaison officers are the primary point of contact in all regions for alternatives to detention and are primarily responsible for advising officers on the effective use of ATD Program tools and providing case management support for individuals released in the community. While the community liaison officer is not likely the primary file holder for specific cases, they are a regional point of contact responsible for ensuring that all cases in detention have been considered for alternatives to detention and for ensuring the inland enforcement officer and hearings officer are equipped with the necessary information and tools to make decisions. The community liaison officer is the sole point of contact in the region for the CCMS service provider.

Community liaison officers are regional program officers with the delegated authorities under the IRPA to make decisions. Despite this authority, they are not expected to make decisions on detention, release or the imposition of conditions. Rather, they support inland enforcement officers, border services officers and hearings officers in the management of their cases and the execution of their work. Community liaison officers, in conjunction with inland enforcement officers, monitor individuals released into the community to assess their continued compliance with the ATD Program. Community liaison officers remain the subject matter experts on alternatives to detention programming.

5.2. ATDMC

The ATDMC performs monitoring and first-stage review of VR violations, including fraud detection and data integrity assessments. The results of the review are forwarded to the regions for action, as appropriate. This function is intended to reduce pressure on regional inland enforcement offices to allow for a more focused emphasis on regional desk and road investigations.

5.3. CSC Monitoring Centre

The CSC Monitoring Centre monitors the status of individuals enrolled in EM 24 hours per day and seven days per week and immediately notifies the CBSA of any violations of EM conditions. The CSC Monitoring Centre also confirms the successful installation and application of EM equipment during enrolment and provides technical support to CBSA officers responsible for managing individuals on EM.

5.4. CCMS service provider

The CCMS service provider writes an assessment of individuals referred to them that describes the services and support available that are expected to mitigate the individual's risk in the community. Once the individual is enrolled in CCMS programming, the CCMS service provider monitors the individual and provides case management services. Information regarding changes in circumstances and violations is reported to the CBSA for review and action, if required.

The CCMS service provider must ensure the necessary services and programs are available in the service locations listed in the contract and fulfill the reporting and administrative obligations outlined in the contract. The CCMS service provider must provide qualified, security-cleared staff to perform case management functions, as specified in the contract.

6. Instruments and delegations

No delegations were added or amended in relation to the ATD Program.

7. Authority to impose conditions

Designated CBSA and IRCC officers, as well as the Immigration Division, have authority to impose conditions under subsection A44(3). In addition, designated CBSA officers are also authorized to arrest and detain foreign nationals and permanent residents in circumstances prescribed in section A55 and to impose conditions under section A56. The Immigration Division may order the release of an individual from detention, in accordance with section A58.

Subsection A44(3) should be used when the conditions are being imposed on an individual who is not detained under the IRPA, and no grounds for detention are present. Individuals who are not detained usually present a lower level of risk, which means that less intrusive intervention options are most likely appropriate.

8. Assessment of alternatives to detention

8.1. Risk identification

Risk identification requires an evaluation of the information available at the time and includes any pieces of information or evidence available that may help predict future behaviour.

Risks are related to the objectives of the IRPA and can generally be categorized in one of the following two ways:

1. The first is risk to public safety, as described in paragraphs A3(1)(h) and A3(2)(g). Public safety is the top priority for the CBSA. When the public safety consequences associated with this risk are significant, these risks need to be virtually eliminated before release.

2. The second is risk to program integrity. These risks relate to a negative impact on achieving all other objectives of the IRPA. The acceptable degree of risk depends on the specific circumstances and is discussed further below.

At this stage, the focus is on identifying information that will be analyzed in the next step.

8.2. Conducting the risk analysis

Once all the available information on the risks has been gathered, officers must analyze the information to determine the weight to be given to the information. The following factors and questions assist in determining the weight to be given:

1. How reliable, accurate and comprehensive is the information?
    a. Greater weight should be given to information that is believed to be unbiased and fully describes the behaviour or circumstances.
2. How likely is it that the risk will impact the CBSA's enforcement mandate or IRPA objective?
    a. Greater weight should be given to information that directly relates to the objectives of the IRPA. For example, a history of failing to appear for immigration proceedings should be given more weight than failure to appear for regulatory (traffic) proceedings.

Using the information gathered, officers consider the prescribed factors, as identified in sections 244 to 247 of the Immigration and Refugee Protection Regulations (IRPR), as well as some additional factors discussed below, as they relate to the grounds for detention.

8.2.1. Flight risk

Individuals who pose a risk of not appearing for proceedings (Unlikely to Appear) should be more likely to appear than not after the imposition of conditions, taking into account the factors in section R245 and paragraphs R248(b), (c) and (d) as well as any other relevant factors, such as

- objective assessment of their chances of gaining durable status in Canada
- existence of strong ties to a community in Canada
    - Strong ties are a factor in favour of release if the ties are to a person or people who can influence the person to appear for proceedings. Strong ties are a factor against release if the person or people have shown not to have a positive influence and, therefore, become a strong pull factor motivating the individual not to appear for removal.
- access to a significant amount of wealth, which may provide an increased ability to abscond
- use of false identity documents and aliases to evade detection from the authorities
- attempts to hide their presence in Canada
- lack of credibility, as demonstrated in dealings with immigration or police officials
- co-operation of the individual
    - If an individual is uncooperative with the CBSA, this is a strong indicator that the individual is unlikely to comply with imposed conditions.

8.2.2. Identity

It is rarely appropriate for individuals who are detained for identity to be released on the basis of alternatives to detention when the length of detention is anticipated to be short. Establishing the identity of an individual is the cornerstone to all immigration proceedings, including the assessment of the risk the individual poses. Every case must be assessed on its individual details, and if the length of time in detention, predicted future length of detention or other circumstance warrants the consideration of release on conditions, individuals should be evaluated by using the same criteria as danger to the public and flight risk, given the information available.

The CBSA must have enough reliable, accurate and comprehensive information to assess effectively the risk posed by an individual if released. If the CBSA does not have sufficient information, release on the basis of alternatives to detention is generally not appropriate until the CBSA is able to, based on a balance of probabilities, feel sufficiently comfortable that the information on file is enough to predict risk.

8.2.3. Danger

Individuals who are detained for danger to the public should have their risk mitigated, so the risk of serious harm to the public is significantly reduced by the conditions being imposed. Factors to be assessed include the following:

- assessment related to present or future danger based on prior history
- positive danger opinion from the Minister
- association with criminal organizations, including people smuggling and human trafficking (membership is not required, just association; a criminal record is not required either)
- convictions in Canada for offences involving violence or drug trafficking
- charges or convictions outside Canada involving violence or drugs trafficking
- age of convictions must be considered, as the more time that has passed since the convictions the lesser the risk, taking into account efforts by the individual to rehabilitate, including any associated factors, such as substance addiction (more weight should be given to this factor if the individual has been living in the community as opposed to in detention, where there is limited opportunity to re-offend)
- parole and bail decisions are good references when evaluating the level of danger (both decisions take danger into account but use different criteria)
- nature of the risk posed
    - For example, if an individual presents a very likely risk of serious harm to the public, the risk should be significantly reduced by the conditions being imposed. If the risk posed to the public is based on predictive factors and is more general in nature, the imposed conditions should reasonably be expected to reduce the general risk posed.

8.2.4. Mental health concerns

The risk posed by individuals with mental health concerns depends largely on the available treatment options and the individual's ability and willingness to participate in the treatment. The history of the individual's compliance with previous treatment is a good indicator of future compliance.

The National Risk Assessment for Detention (NRAD) form is used to determine the appropriate placement of individuals in detention. Many of the factors identified and analyzed in the NRAD form are likely relevant to a risk analysis for alternatives to detention; however, the analysis of risks for purposes of alternatives to detention must be done separately from the NRAD form decision.

For more information on risk analysis and the use of the NRAD form, see ENF 20.

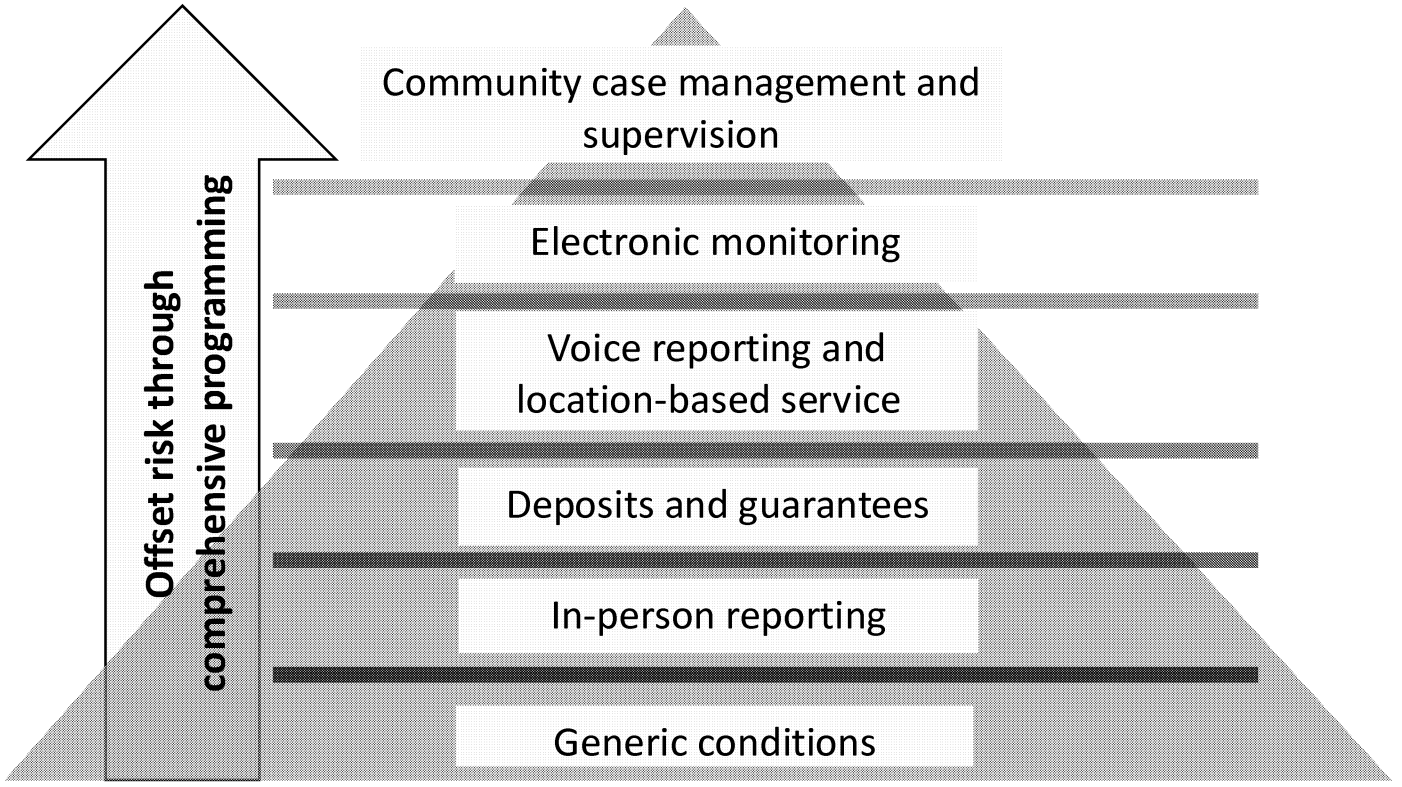
8.3. Risk offset

Risk offset describes the degree to which the condition that is imposed is expected to reduce the risk posed. Identifying conditions that effectively reduce the specific risk or risks posed is the intended outcome of this phase of the assessment of alternatives to detention.

A condition imposed as a risk offset should

- reduce the likelihood of the risk impacting the enforcement outcome
- reduce the risk of harm to the public
- address specific negative behaviours of the individual
- be reasonable and only as intrusive as necessary

The graphic below depicts the risk offset provided by the tools available in the ATD Program, with the least intrusion and least risk mitigation at the bottom and the most intrusion and most risk mitigation at the top. CCMS (mandatory residency) and EM are generally too intrusive to be imposed under subsection A44(3) or A56(1) by CBSA officers and should be only be imposed under subsectionA58(1) by the IRB, except in rare circumstances.



Below is a general guide to the risk offset provided by the elements of the ATD Program.

Risk offset	Conditions	Rationale
Minimal risk offset	General conditions, in-person reporting and VR	These conditions maintain a close relationship between the CBSA and individuals under immigration enforcement proceedings. This

		communication channel supports individuals in voluntarily complying with requirements.
Moderate risk offset	Deposits and guarantee(s), CCMS and VR, with location restrictions	These conditions influence individuals to comply with requirements by providing support in the community, coupled with closer oversight and monitoring.
High risk offset	CCMS high intervention programming, EM (in GTA) or both	These conditions provide restrictions on the activities of individuals in the community and constant monitoring of their compliance with these restrictions.

Below is a guide to the specific elements to be considered when determining suitability for the tools provided by the expanded ATD Program.

Elements		Suitability considerations
Level of co-operation	VR CCMS low or medium intervention	These conditions are intended for co-operative individuals; uncooperative individuals are unsuitable, due to high risk of non-compliance.
	VR, with location requirements CCMS high intervention EM (GTA only)	These conditions are intended for co-operative individuals; uncooperative individuals are generally unsuitable, unless higher intervention programming can mitigate risk.
Detained for unlikelihood to appear	VR CCMS low or medium intervention	These conditions are intended for individuals who can remain compliant in the community, despite a previous history of failure to comply.
	VR, with location requirements CCMS high intervention EM (GTA only)	These conditions are intended for individuals who can remain compliant in the community with very stringent conditions and for those who could possibly become compliant with mandatory residency to transition into the community.
Detained for identity	VR CCMS low or medium intervention	These conditions are intended for individuals whose identity concerns can be appropriately risk-managed in the community.
	VR, with location requirements CCMS high intervention EM (GTA only)	These conditions are intended for individuals whose identity concerns can be appropriately risk managed in the community.
Detained for danger	VR, with location requirements CCMS high intervention EM (GTA only)	These conditions are intended to mitigate high levels of risk, that is, serious criminality [A36(1)].

8.4. Evaluation of residual risk

Residual risk is the level of risk that remains if it is decided that an individual be placed on conditions. It is either acceptable residual risk (the risk has been sufficiently mitigated) or unacceptable residual risk (the risk has not been sufficiently mitigated). When an officer is considering release, or when a hearings officer is making submissions on release to the IRB, the residual risk posed by the individual after conditions are imposed is the primary consideration.

What is acceptable or unacceptable in any given case depends on the unique facts of the case. Therefore, a case-by-case analysis is required. It is important for officers to remember that risk elimination is not possible.

When deciding if the residual risk is acceptable for individuals who are unlikely to appear, officers should be evaluating on a balance of probabilities whether the individual is more likely to appear than not.

When deciding if the residual risk is acceptable for individuals who are detained for identity, officers must evaluate the risk of the individual not appearing and the possible danger to the public the individual poses, taking into account the risks inherent in not being satisfied with the individual's identity. Additionally, officers must be satisfied that the ability to continue the investigation into the individual's identity is not negatively impacted by releasing the individual on the conditions available.

For individuals who present a danger to the public, the residual risk must be very low. The IRPA prioritizes the safety of the public and, therefore, any risk posed must be minimal, taking into account all the individual circumstances.

If the residual risk is acceptable, in the officer's opinion, they may decide to release (pre-48-hour detention review) or present the release options to the IRB (at a detention review).

If the residual risk is unacceptable, in the officer's opinion, taking into account the factors in paragraphs R248(a) to (d), they should proceed with making a recommendation for continued detention to the authorized reviewing manager or the IRB, as appropriate.

ENF 3 provides guidance on evaluating residual risk at detention reviews.

8.5. Documenting the decision

Officers are required to document their assessment of alternatives to detention and the reasons the decision to continue detention or release on the basis of alternatives to detention was made. The written assessment of alternatives to detention must include, at a minimum

- the information that was available at the time the assessment was made
- factors used to determine the weight given to the information

- the risks identified
- for decisions to continue detention, the factors in paragraphs R248(a) to (d) that weighed in favour of detention, when balanced against the risk offset provided by the available alternatives to detention
- for decisions to release on the basis of alternatives to detention, the risk offset provided by the alternatives to detention
- justification for any decision that is an exception to the guidelines provided in this manual or other operational guidance

The form and location of the written assessment depends on the circumstances but must be placed on the physical file, in accordance with policies.

9. Vulnerable persons

Some vulnerable persons have an increased risk, based on their vulnerability. Vulnerable persons may include but are not limited to individuals with health, mental health or addiction issues; the elderly; minors; and victims of trafficking. The nature and severity of the vulnerability need to be taken in account when determining an acceptable residual risk for a vulnerable person.

It is recognized that detention has a greater impact on vulnerable persons, and detention should be minimized to the extent possible for such groups. Risk tolerance may be influenced by vulnerability factors. Each case needs to be assessed on its case-specific factors to determine if release is a viable option.

See ENF 20 for more information regarding vulnerable persons.

10. Minors

See ENF 20 for guidance on the factors to be considered when a case involves a minor child. This includes detention decisions related to parents and legal guardians of minors when the minor is affected.

11. Use of Alternatives to Detention Program tools at ports of entry

The assessment process for alternatives to detention is the same at ports of entry (POE) as it is for inland cases. However, most POE cases have factors under paragraphs R248(a) to (e) that may make the residual risk too high for release to be appropriate when those factors are taken into account.

Most POE detentions are for a very short amount of time, and the grounds for detention are usually related to a high or unknown risk. These factors usually weigh heavily in favour of

detention. However, this does not preclude the officer's responsibility to assess and consider alternatives to detention in all cases where detention may be continued. Consideration for an alternative to detention may be limited by time constraints that are present at a POE. In instances where an individual may be considered for release on an alternative to detention, but where the alternative to detention is not available at the time of detention, notes to file must be documented to refer the individual for further consideration within the first 48 hours by an inland enforcement officer or a community liaison officer.

If an officer working at a POE is of the opinion that the imposition of CCMS, VR or EM may be appropriate, they need to consult with the community liaison officer or local inland enforcement office in their respective region. The community liaison officer reviews the case and provides guidance on the best course of action.

12. Presenting the alternatives to detention assessment at detention reviews

The results of an alternatives to detention assessment is used by hearings officers when making submissions to the IRB on the residual risk posed by an individual if released. This may include the assessment by the CCMS service provider, if enrolment in CCMS is being proposed. In general, hearings officers make submissions on whether the factors in paragraphs R248(a) to (d) weigh in favour of detention or release, taking into account the residual risk after the available alternatives to detention are considered.

See ENF 3 for more information on the factors for consideration and procedures at detention reviews.

If the CBSA has not referred the case to the CCMS service provider and does not intend to in the foreseeable future, hearings officers should provide a brief explanation of that decision. If the IRB requests that the individual be referred to the CCMS service provider for assessment, the CBSA should do so.

When making submissions on the wording of the conditions for VR, CCMS and EM, hearings officers should propose language that allow the CCMS service provider and the CBSA the latitude necessary to manage the person effectively while released. The proposed wording of the conditions should authorize the CBSA to modify or cancel the conditions imposed by the IRB related to VR, CCMS and EM.

13. Privacy and information-sharing

Information collected under the ATD Program can only be disclosed under the provisions of the Privacy Act. See CBSA guidelines of information-sharing for details.

In general, collected information can be shared under paragraph 8(2)(a) of the Privacy Act if it is shared for a use consistent with the purpose it was collected for. Information related to alternatives to detention is collected for the purpose of administering and enforcing the IRPA.

13.1. Privacy and geolocation information

Individuals who have their location shared with the CBSA when enrolled in the VR System must provide written consent for the third-party service provider to obtain their location from their cellular telephone service provider and provide it to the CBSA.

Due to the sensitivity of the location information collected as a part of the VR Program, it is CBSA policy not to share this information under paragraphs 8(2)(e) and 8(2)(f) of the Privacy Act. If this information is requested by outside parties, such as law enforcement partners, another authority must be used to share the information.

Location information is collected for the purposes of monitoring and enforcing compliance with conditions imposed under the IRPA. Location information may only be viewed and used by CBSA officers for these purposes.

13.2. Community case management and supervision Privacy Notice form

The CBSA is authorized to share information necessary for assessment and participation in CCMS with the CCMS service provider without the consent of the individual, as prescribed in paragraph 8(2)(a) of the Privacy Act. However, the individual must be notified that their information is being shared. The CCMS Privacy Notice form notifies the individual that their information may be provided to the CCMS service provider to start the assessment process and as needed, if enrolled. The sharing and use of information must be conveyed to the individual by the officer, using an interpreter, if required, before the individual's information is shared outside the CBSA.

13.3. Requesting sensitive information from the community case management and supervision service provider

While enrolled in CCMS, individuals may provide sensitive information, such as health and mental health information, to the CCMS service provider. The CBSA does not have routine access to this information. The CBSA only requests sensitive information from the CCMS service provider if it is required to protect the health or safety of the individual, CBSA staff or the public.

All requests for information from the CCMS service provider must be submitted by a community liaison officer. The community liaison officer ensures that the requested information meets the requirements of the above policy and other applicable polices, regulations and legislation.

Appendix A

13.3.1. Forms

The forms below are specific to the ATD Program. The forms necessary for the imposition of conditions and administration of deposits and guarantees are found in ENF 8 Deposits and guarantees.

CCMS Privacy Notice form [BSF 803]	Provided to all individuals being considered for CCMS before their information is shared outside the CBSA
CCMS Referral form [BSF 801]	Used by the officer, community liaison officer, CCMS service provider or all of the above to document the proposed release plan
CCMS Supervision Agreement [BSF 802]	Documents the detailed programming and associated requirements specific to an individual's release plan with a CCMS service provider
Alternatives to Detention Change of Conditions form [BSF 806]	Used by the CCMS service provider to recommend and justify a change of conditions
CCMS case summary form [BSF 805]	Used by the CCMS service provider to convey new, pertinent information regarding an individual enrolled in a community supervision program to the CBSA
CCMS Report of Non-Compliance [BSF 807]	Used by the CCMS service provider to provide the CBSA with details of an individual's failure to comply with a requirement of the CCMS Supervision Agreement
EM Client Set Up [BSF 808]	Used to provide CSC with the details necessary to set up a CBSA individual on EM in the CSC monitoring software
EM Instructions [BSF 809]	Provides details and instructions on what is required of an individual enrolled on an EM program
VR Consent form [BSF 804]	Explains the collection of geolocation information and records the individual's consent to be a participant in the VR Program, confirms the individual is the account holder or has the permission of the account holder and has exclusive use of the cellular telephone (only required if reporting by cellular telephone)
Toronto Bail Program (TBP) Bail Supervision Contract	Used by the TBP to outline the rules of supervision, including reporting frequency and ability of the TBP to share information with the CBSA
TBP Interview Results Sheet	Used by the TBP to record the outcome of the assessment interview and provided to the CBSA for information and recording purposes
TBP Agreement of Supervision	Used by the TBP to confirm that the individual has agreed to abide by conditions required for release
TBP Withdrawal of Supervision Letter	Used by the TBP to advise the CBSA that supervision must be terminated and supervision services are withdrawn
TBP Graduation Request	Used by the TBP to advise the CBSA that supervision may no longer be required and to request that the individual be graduated from TBP programming